

On The Docket

US Bankruptcy Court, District of Rhode Island

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EDITED BY: KRISTEN E. BATTY, HR ADMINISTRATOR

Inner Workings: News and Advice

By: Susan M. Thurston, Clerk of Court

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Welcome back! We are pleased to bring you our newest edition of *On the Docket* for 2007. We plan to resume publishing this newsletter on a quarterly basis in the future and hope you will feel free to contact us with suggestions for articles or topics of interest.

Important news for the start of 2007 is the Court's conversion to a new telephone system which necessitated changing our long standing phone numbers. The new main number for the Clerk's office is (401) 626-3100 and for Chambers is (401) 626-3060. The conversion went well and now each employee has a direct contact number rather than requiring connection through the main line and extensions. A com-

plete list of updated employee phone numbers is available on our website at <http://www.rib.uscourts.gov/CourtInformation/04/telephone.htm>, and is also printed on the back page of this newsletter. One of the many benefits of the new phone system will be our ability to offer video-conferencing in the courtroom and in the clerk's conference room. We anticipate that this new technology will be in place and available for use by late summer .



401-626-3100 = Clerk's Office
401-626-3060 = Chambers

As of January 1, 2007, all filings with the bankruptcy court (with the exception of pro se filings and persons granted exemption), are being made using the court's electronic case filing system, otherwise known as CM/ECF. The requirements for using the system are now contained in Bankruptcy Local Rule 5005-4. In addition, our website contains an entire section on e-filing including registration, training, user manual and related resources. There is also a Knowledge Base where filers can look up frequently asked questions or pose one of their own.

The Court's Financial Literacy program, patterned

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after a similar program in Massachusetts, commenced in late January at West Warwick High School. Volunteer lawyers and court staff presented training to high school students in 4 subject areas covering personal finance, budgeting, credit cards, and financing a car. The final session on the consequences of misusing credit was held at the Bankruptcy Court on March 13 and included a mock 341 meeting of creditors and a mock relief from stay hearing. The court is extremely appreciative of

the volunteer efforts of its participants who included Patty Webb, Robert Cabral, Tom Quinn, Peter Furness, Gail Kelleher, Matt Flynn, Cindy Cory, Lisa Geremia, Jon Calianos, Holly D'Agostino, Jennifer Watts, Carolyn Sweeney, Charlie Pisaturo, Stacy Ferrera, Joe Wilkicki, Tom Enright, Charlie Lovell, John Simonian, Kristen Batty, Patricia Antonelli, and Susan Thurston.

Lastly, the court is reviewing its website in anticipation of a new design and layout to create a more organized site for the public. The Attor-

ney Advisory Committee weighed in on suggested changes, and we also encourage our readers to let us know how we can improve this vital resource. I encourage users to send us an email to me at Susan.Thurston@rib.uscourts.gov with any suggestions for additional content or an improved way to display the information into a more user friendly format. Our goal is to have the new layout completed by early fall, so please forward your comments in the coming months as you think of them.

Team Coach

By: Lucinda Cory, Courtroom Deputy

**"THE P.4
DECLARATION
WAS UPDATED
FEBRUARY,
2007 AND THIS
VERSION IS NOW
REQUIRED.**

Now that electronic filing is mandatory and most of our e-filers have become familiar with the system, we see fewer and fewer filing errors. The most common errors involve using incorrect or outdated forms, choosing wrong events, linking issues, incorrect attachments and incorrect party filers. Here are some ad-

ditional tips:

1. Please be sure to check the forms on the website to verify that you are using the most up-to-date forms. For example, the P-4 Declaration was updated 02/07 and this version is now required.
2. Remember the mantra from training class: **Your Password is Your Signature**. When a pleading is signed by an attorney, it must be filed using the password of the attorney who signed it. In a large office, one attorney cannot produce and sign the pleading and then file

it using another attorney's password (electronic signature). The password used and signature on the document must match.

3. The second mantra from training class was to **right click and open all documents prior to attaching to verify**. If you follow this simple rule, you will **never** attach the incorrect document. You should check for the same items the clerks look for: correct case, correct case number, correct

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(Team Coach cont. from page 2)

document, signature and certificate of service.

4. Motions to continue hearings should only be linked to the **underlying pleading(s)** to be continued, such as a Motion for Relief from Stay or Complaint. Do not link to the hearing notice - you want to continue the **pleading(s)** for hearing on another date **not the hearing notice**.

5. Motions to shorten time: when you file a motion to shorten time, you must compute the objection deadline as **5 business days from the date of service**. Do not count

weekends or holidays.

6. Party filers: If there are two signatories to a document, such as a joint pretrial order, a stipulation, consent order, agreed motion, you must choose both signatories as the party filers.

7. When a skeletal petition has been filed, the missing schedules are filed using the "missing documents" event. After the initial filing of all schedules, when schedules are amended, the "amended schedules" event is used (and the statistical boxes must be updated to reflect the total amounts on those schedules, not just the added/amended

amounts).

8. Amended mean test document requires a P-4 Declaration.

Lastly, please remember to call the assigned case manager if you have questions!



When a skeletal petition is filed, the missing schedules are filed using the "missing documents" event.

Tips to Remember . . .

By: Lucinda Cory, Courtroom Deputy

Statistical Information

Effective October 17, 2006, courts were required to report additional statistical data to the Administrative Office of the U.S. Courts, pursuant to BAPCPA and the Judicial Conference. A new Form 6 (2 page Summary of Schedules) was provided for this purpose, and the informa-



tion supplied on that schedule is transmitted electronically to the Statistics Division in Washington, D.C.

The information is automatically completed in CMECF by filers using Bankruptcy Case Software such as Best Case, EZ File, etc. However, the clerk's office has observed that in the following examples, the required information is either entirely omitted, incomplete, or erroneously completed:

Example 1 - Skeletal Petitions

When the balance of schedules are later filed in bankruptcy cases that were incomplete at the time of filing, attorneys **are required to manually complete** each box of the CM/ECF Form 6 screen in order to properly transmit the data to the Statistical Division of the Administrative Office. Failure to insert a value (including "0" when appropriate) in each of the appropriate boxes results in

(Tips cont. from page 3)

a statistical transmission error upon case closing.

Example 2 - Amended Schedules

Attorneys are also required to manually complete each box of the CMECF screen in order to properly transmit the data to the Statistical Division of the Administrative Office.

Failure to insert a value (including "0" when appropriate) in each of the white boxes results in a statistical transmission error upon case closing, which must be corrected by the Clerk's office staff, or may be treated as defective.

Another common mistake is inserting only the amount of the amended schedule instead

of the **total amount** for that Schedule. Amounts added by the attorneys overwrite the original amount, resulting in erroneous data being reported to the Statistics Division.

Please be sure to fully complete the Form 6 screen when filing missing or amended documents/schedules. A message has been added to these events as a reminder.

Amended Schedules - With and Without Fees

There is now one event to amend all schedules at one time. Use the Bankruptcy module, Other, Amended Schedules and Statements" event. This event allows you to choose all the schedules you are amending and to determine

if a fee is due. There is a prompt to tell you what which amendments require a fee. Exemptions to the fee include any

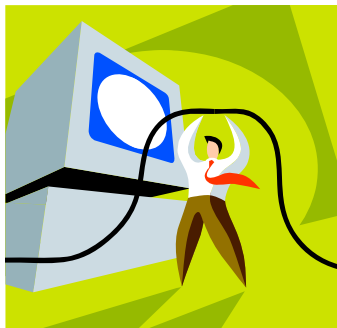
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or a



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peris,
change
to

Amended Schedules—"To Pay or Not to Pay".

schedules D, E, or F that **only** changes the classification of a debt. Also, please remember to enter the total amounts on the statistical screens, not just the amounts for the amendments.



Tech Tip Re: Audio
CD of Courtroom
Proceedings

Here's a tech tip for those of you who request courtroom audio files CD. Often we hear concerns that the volume of the CD is too low, requiring the listener to turn up their speakers or to wear a headset. To improve sound quality, we recommend using the FREE RCplayer software from VoicIQ which is on the CD to play your audio files. Each CD contains the software, instructions for use, and the requested audio file.

New Unclaimed Fund Process

By: April Elderkin, Financial Administrator

When a bankruptcy case trustee is unable to locate a claimant when distributing funds in an asset case, those unclaimed funds are placed on deposit with the court. Did you know that the Bankruptcy Court is currently holding more than \$332,000 in unclaimed funds from cases filed as early as 1981 to the present? A list of these cases, the names of creditors owed, and the amounts on deposit are recorded and available for public inspection on the court's web site under Court Resources at: <http://www.rib.uscourts.gov/CourtResources/ucfunds/ucfunds.htm>

Creditors who find themselves listed on our Unclaimed Funds page should consult Rhode Island Local Bankruptcy Rule 3011-1 for the procedure by which they may recover funds on deposit with the Court. Several forms must be completed and proper identification provided in order for the court to release these funds. On February 1, 2007, a revised Form E, entitled "Petition for Payment of Unclaimed Funds" was adopted and replaced the previous version and must be used for all future applications filed with the Court. This revised *Form E* should be filed

together with either form *Form F.1* or *Form F.2*, as applicable, and all supporting documentation. These documents must contain original signatures and include a certification that a copy of the complete application was also served on the U.S. Attorney at 10 Dorrance St., Providence, RI 02903.

Revised Form E specifies the pertinent information that must be filed with the court depending on whether the petitioner is (1) the individual claimant; (2) a corporation, partnership or other entity; (3) a successor in interest to a previous corporation or (4) an attorney or a 'funds locator' who has been retained by the claimant. Based on which type of petitioner files the application, specific and detailed identification documentation is required, examples of which are listed on *Form E*. Defective applications will be returned to the filer with a list of missing items for resubmission. In some instances, pending applications may require a hearing before being acted on.

Of course the best way for creditors to avoid having to engage in the lengthy process of recovering their claims is to always maintain up-to-date addresses with the court. If,

after the case is initially commenced, the debtor or a creditor changes their address, the new information should imme-



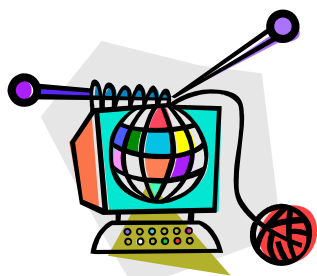
RI Bankruptcy Court holding \$332,000 in unclaimed funds

diately be sent to the court, with copies sent to the case trustee and all parties. Providing the court with the means to maintain accurate mailing information will save you time, effort, and money years later when trying to track down merger information or death certificates, which are often necessary in order to recover your rightful distribution. Any questions concerning the Court's unclaimed funds process should be directed to Financial Administrator, April Elderkin, at (401) 626-3142.

Do I need a web site (or why do I need a web site)?

By: Craig Balme, Information Systems Manager

The other day I needed to find the phone number of a local vendor, so I did what any other person would do in this day and age which was to open a web browser and 'browse' to Google.com. I then typed in the vendors name and was able to immediately click the link to the website which gave



www.google.com

me all the information I needed (and I didn't need to call them a f t e r this).

This is just a simple example of the digital world we live in today. No longer do we break out the phone book (why, just browse to www.whitepages.com, or 'www.yellowpages.com'), or dial 411, but instead jump onto the web and get more information than a live body on the other end of a phone can provide.

Hosting a web site satisfies several areas a company may be interested in which include advertising, marketing, giving immediate information about yourself, and the ability to accept questions and feedback for people who don't like to call on the phone. These reasons may not sound compelling, but how do you know if you are missing clients when you don't even know

about them? Another question is whether or not your competition is running a web site, because most people if they had to choose will pick the company with a web site over one without.

The bottom line is this, if you run a business and want clients, having a web site is invaluable. You can provide them everything they ever wanted to know with a few easy clicks of a mouse.

The following paragraphs are the basic items you need to know in order to have a site setup.

First, you need to pick a domain name. This is the string you type in to find your virtual business, things like 'www.Imanattorney.com' or 'www.buyfromme.com'. Once you have a name picked out you must search for its availability. You will be surprised at how many names are already taken (even ones you think are completely original), often you have to find a name that you can live with but is not exactly what you had in mind.

The next step is to find a company that provides hosting (often you can combine step one and two at the same vendor). This is the place where

you will actually leave your web pages for others to access through their browsers.

Finally, you need to either pay someone to develop a site or work on one yourself. Often there are templates available that you can modify but be advised that this can be difficult and time consuming if you are not experienced in using the software. Sometimes it's cheaper to spend the money and have a professional do the work for you. Also, your web site is a direct reflection on you and your business and you want it to look professional. If your website looks like an amateur put it together, then this perception may be reflected onto your entire company/firm. If the site is a techno-wonder with sounds, flashing pictures, and all kinds of crazy animations then most people will find it too busy and may not stay and look at it. There is a fine balance between a professional web design with good navigation, and a site that is difficult view. Statistics show that the average first visit to a site is between 1-3 seconds. If you do not have a professional design, your customers may move on to someone who does.

I hope this article explains what is needed for a web site, and also gives you an understanding of why it is helpful to have one.

Updates regarding CM/ECF

By: Jody Venuti, Quality Assurance Specialist

There have been a few changes to some of the CM/ECF filing events. One of the most obvious changes being that the certificate of service prompt has been removed from all of our events since the majority of our users are now e-filers. However, you must still include the certificate of service on the document or it **WILL BE STRICKEN** and must be re-filed.

If you are a party in a case trying to view a newly filed transcript, you will need to be logged into **CM/ECF** to view. Interested parties are not able to access the newly filed transcript in **PACER** until the redaction period has expired. Also, if you are trustee the case you must login using your **TRUSTEE** password (only parties in the case have view access during the during the redaction period.

Using the correct event has become more important in Bankruptcy Court as a result of the sta-

tistical information being collected for Congress. When the wrong event is used, filers will receive an **order striking** the document and the case manager will include in text which event should be used to re-file the document. A good example of this is the use of the **modified plan** event once the original Chapter 13 plan has been confirmed. The **amended plan** event should be used instead if confirmation has not yet occurred.

Another problem area is with **amended claims**. When you amend a proof of claim, CM/ECF will add the previous claim total to the amended claim total if a zero is not inserted through the fields that do not apply. For example; say that claim 1 had an unsecured value of \$4,000.00 and a priority value of \$10.00. If claim 1 is later amended (claim 1-2) to delete the priority claim,

and you don't enter zeros through the fields that don't apply, the fields will be added together showing an incorrect total of \$4,010.00 on the claims register.

Lastly, we have added an **Amended Matrix** event to the **OTHER** category under the Bankruptcy Menu for your filing convenience. Be advised that the event prompts you to attach a pdf of your amended matrix listing **ONLY the NEW creditors**. There is also a method for entering the new creditors individually through this event, or, if there are many of them, a new matrix.txt file can be uploaded (under creditor maintenance>upload creditor matrix) after submission of the Amended Matrix event.

As always, if you have any questions or concerns, feel free to call me at 626-3145.

REVISED BANKRUPTCY FORMS EFFECTIVE 4/1/2007:

Official Form 1	Official Form 10
Schedule C	Official Form 22A
Schedule E	Official Form 22C
Official Form 7	

Remember: For cases filed before April 1, 2007 use the old forms (modified 10/06). For cases filed on or after April 1, 2007 use the newly revised forms (modified 04/07).

Recent Local Rule, Form, and Appendices Changes

By: Amy Geraghty, Legal Case Management Clerk

Effective February 1, 2007, the Court adopted several amendments to its local rule, forms, and appendices. These include: Local Rules: 1005-1, 1007-1, 4001-1, 4008-1, 5005-4, 5005-5, 7003-1; RI. Bankr. Forms E, P4, Form R, and Appendix IX. In addition to the February amendments, the



Court adopted Local Rule 1005-2, effective March 15, 2007.

Below is a brief summary of each change, but practitioners are advised to obtain a complete copy of the amendments and familiarize themselves with the changes. In addition, loose-leaf copies of the revised rules, forms and appendices are also available in the Clerk's office at no charge, or on-line at www.rib.uscourts.gov.

LBR 1005-1 (amended) - Now requires that every paper

filed with the Clerk include the email address of the attorney filers.

LBR 1005-2 (new) - This rule specifies the precise language required when filing an affidavit and/or a sworn or unsworn declaration.

LBR 1007-1 (amended) Adds Official Form 1 (Exhibit D) or if applicable, a certificate of credit counseling or a motion to be exempt from credit counseling, or certificate of exigent circumstances to the list of filings subject to a two (2) business day filing deadline. Also, if the debtor checks statement #2 contained in Official Form 1, Exhibit D, then the certificate of credit counseling is due within 15 days.

LBR 4001-1(amended) - This rule was amended to include a modification to the automatic stay in chapter 13 cases. The modification allows affected secured creditors to contact the debtor in writing regarding: (1) the status of insurance coverage, tax payments and/or municipal charges on property used as collateral; (2) making direct payments to the creditor and regarding payment defaults; and (3) routine statements, payment coupons and other typical correspondence

that the creditor would send to its non-debtor customers. In addition, a copy of the writing must be sent to the debtor's counsel. Section (d) of 4001-1 was streamlined to remove specific objection language delineated for use when filing an opposition to a motion for relief from stay. The opposing party should respond to the motion as they see fit, instead of having the Court give specific instructions on how to respond.

LBR 4008-1 (amended) Section (a) was amended to remove the last revision date of Official Form B240, reaffirmation agreement, and replace it with the requirement that the filer use, "the most current version" in light of the numerous recent revisions to this form.

LBR 5005-4 (new) In the past, the Administrative General Order Establishing Procedures for Filing, Signing, Maintaining, and Verifying Pleadings and Other Document in the Electronic Case Filing (ECF) System, the "AGO" was the authority on filing papers electronically. This new local rule incorporates the requirements of the AGO.

LBR 5005-5 (amended) This

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technical amendment removed the reference to the AGO.

LBR 7003-1 (amended) This rule was amended to remove the requirement that filers use R.I. Form R, and instead requires that filers use the most current version of the Adversary Proceeding Cover Sheet Form 104.

Other miscellaneous rule changes: **LBR 1005-1, 9013-2, 9013-3, 9022-1, 9070-1, and 9072-1** were amended to include the following language: CROSS REFERENCE *See* RI LBR 5005-4 Electronic Filing.

In addition to the local rule changes, there are several new mandatory local form changes,

notably **Form E (revised)** - Petition for Payment of Unclaimed Funds. R.I. Bankr. Form E, required under Local Rule 3011-1, has been amended to clearly identify the claimant, and sets forth the proper form of identification and documentation required to be filed with the petition for payment of unclaimed funds.

Another important change was the amendment to **Form P4 (revised)** - Declaration Regarding Electronic Filing for all Other Documents Requiring Original Signatures. In Part 3 - Declaration of Attorney, counsel is now required to provide the date that the document was electronically filed, and the corresponding document number assigned to

the filing.

Form R (abolished) - Adversary proceeding cover sheet was abolished as a local form as this is now a federal form and the most recent version can be obtained by visiting the Court's website.

Finally, **Appendix IX (abolished)** - Administrative General Order Establishing Procedures for Filing, Signing, Maintaining, and Verifying Pleadings and Other Document in the Electronic Case Filing (ECF) System has been incorporated into Local Rule 5005-4 and is therefore abolished as a separate appendix.

Important Information RE: CM/ECF Training

By Michelle McCurdy, ECF Training Coordinator

If you are interested in becoming an electronic filer, please visit our website at www.rib.uscourts.gov and download the applicable registration and prerequisite forms.

If you are currently registered in CM/ECF in another bankruptcy OR district court, you are not required to attend ECF training in our court. So for those of you who were trained at US District Court for the District of RI, simply download the Registration Form along with the Affidavit of Registration in Another District and file these two documents with the Court. A login and password will be assigned to you. ****If you would like to attend our training class, we encourage you to do so, but it is not required***

PLEASE NOTE: After registering for training, you may file pleadings conventionally until you attend the ECF training class.

Recent Court Decisions

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

Here is a short digest of some noteworthy opinions from the Court. As always, the full text of Court opinions are available on our website www.rib.uscourts.gov.



Is the Means Test Required?

If a Debtor files a Chapter 13 Petition and then Seeks to Convert to Chapter 7, is the Debtor Required to File the Form B22A (The Chapter 7 Means Test Form)?

The Case: *In Re Perfetto*, __B.R.__, 2007 WL 172190 (Bankr. D.R.I. Jan 19, 2007).

Short Answer: YES.

The debtor filed a Chapter 13 petition with Schedules I and J showing a net cash loss on a monthly basis. Two weeks later she filed a notice of voluntary conversion to Chapter 7. The Court issued a notice requiring the

debtor to file the Form B22A, and the debtor objected. The debtor argued that the means test forms for Chapter 7 and 13 were virtually identical and no new information would be forthcoming if the debtor completed and filed the B22A. The United States Trustee filed a response supporting the Court's practice, arguing that requiring the form upon conversion prevents a debtor from entering Chapter 7 via an unintended back door. The Court took the common sense approach in reviewing the relevant BAPCPA amendments to the Code and when read in conjunction with Section 348 (a) and Interim Fed. R. Bankr. P. 1007(b)(4), the Court concluded that upon conversion from Chapter 13 to Chapter 7, debtors are required to complete and file the Form B22A.

As Part of a Chapter 13 Proceeding, Can a Secured Creditor be Required to File a Fee Application Detailing the Cost and Fees it incurred Pre-Confirmation?

The Case: *In Re Mihok*, BK No. 06-10062, (Bankr. D.R.I. March 14, 2007).

Short Answer: YES

The debtor's Chapter 13 plan included a provision that required any mortgagee seeking fees or costs from the debtor or property of the bankruptcy estate from the commencement of the case through confirmation to file an application with the Court. The bank objected, arguing that the provision was an impermissible modification of the note and mortgage under Section 1322(b)(2). The Court disagreed and held that merely requesting an application does not modify any of the bank's contractual rights. The Court found *inter alia* that the fee application provisions were triggered because the mortgagee's claim was being paid from property of the estate. The Court added that while a debtor can request an application, the mortgagee is allowed to add the reasonable costs incurred in preparing the application, provided that the ultimate amount awarded by the court is not materially different than the mortgagee's original request.

When a Debtor files for Bankruptcy Twice within

(Continued on page 11)

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One Year, is the Automatic Stay Lifted as to the Debtor Only, or Do the Provisions of Section 362(c)(3)(A) Encompass Property of the Bankruptcy Estate as Well?

The Case: *In re Pope*, BK No. 06-10169, (Bankr. D.R.I. October 3, 2006)

Short Answer: The termination of the stay under 11 U.S.C. ' 362(c)(3)(A), for a two time debtor applies to the debtor and property of the

debtor only, and not to property of the estate.

The debtors= first Chapter 13 case was dismissed because they failed to file certain documents and within one year they filed a second Chapter 13. A secured creditor moved for confirmation that the automatic stay terminated with respect to its collateral (the debtors= home) under Section 362 (c)(3)(A). The Court followed the majority line of decisions holding that Section 362(c)(3) (A) terminates the stay only as

it applies to the debtors or the debtors= property, but not property of the estate. Because the debtors= home was property of the estate, the Court denied the creditor=s motion.



The termination of the stay for a two time debtor applies to the debtor and property of the debtor only, and not to property of the estate.



Students from West Warwick High School recently participated in the court's first pilot Financial Literacy Program, coordinated by Clerk of Court, Susan Thurston, and Patricia Antonelli, Esq.

Volunteer participants included: In front row - Charlie Pisaturo, Kristen Batty, Susan Thurston, Lisa Geremia, John Simonian, Holly D'Agostino, Judge Votolato. In the back row - Charlie Lovell, Lucinda Cory, Joseph Wilkicki, Patty Webb, Robert Cabral and Patricia Antonelli pictured at the "Consequences Session" held in the Courtroom on Tuesday, March 13, 2007.



West Warwick High School students

Telephone Directory

USBC-RI Main Office

(401) 626-3100
FAX number (401) 626-3150

Judge's Chambers Staff

(401) 626-3060
FAX number (401) 626-3080

Clerk of Court

Susan Thurston 626-3130

Chief Deputy Clerk

Gail K. 626-3141

Financial Administrator

April E. 626-3142

Human Resources Specialist

Kristen B. 626-3133

Administrative Assistant

Joe W. 626-3143

Data Quality Administrator

Michelle M. 626-3120

Intake and Case Managers

Amy G. 626-3127 Holly D. 626-3135

Anne O. 626-3129 Jennifer D. 626-3110

Christine L. 626-3112 Linda S. 626-3121

Carolyn S. 626-3134 Jennifer W. 626-3136

Calendar Clerk

Cindy C. 626-3132

Court Recorder

Joe W. 626-3143

Automation Department

Craig B. Systems Manager 626-3140

Jody V. Quality Assurance Specialist 626-3145

Steve S. Automation Specialist 626-3126