United States Bankruptcy Court, District of Rhode Island

# ON THE DOCKET

spring is coming!

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**NEW** Local Rule Book on sale now

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#### **Inner Workings: News and Advice**

by Susan Thurston, Clerk of Court

Welcome 2021! Yes, it is good to welcome in a new year with the prospect of an end to this pandemic and the ability to be vaccinated against COVID-19. Perhaps surprisingly, things at the court have been fairly quiet the last several months as our caseload remains below historic levels. We believe this is due to the many programs and services in place during 2020 to financially assist the unemployed and underemployed during the pandemic by placing moratoriums on foreclosures, evictions, student loans and a general delay of many debt collections. The Boston Globe recently featured our district in a discussion on declining bankruptcy case filings and our 30-year caseload low. Statistics on case filings are available on page 14 of this newsletter for your information, as well as on our website statistics page.

By now, we hope you regularly review our two Coronavirus web pages that list the many changes we have implemented since last March to assist attorneys and self-represented filers with bankruptcy practice while the court is not physically open to the public. We are available in person by appointment, and of course by mail, telephone, email and online chat. See this page for the many ways to contact us.

As you know, during 2020 Congress passed two Coronavirus related bills that included changes to the bankruptcy laws. The Court created several training documents summarizing these changes with links to the statutes. I encourage all practitioners to review these materials and to understand what new provisions are available for debtors in bankruptcy impacted by COVID 19. The Court has updated the ECF electronic filing database to implement the changes that are now in effect. *See*, April 27, 2020 Summary Document on CARES Act and April 10, 2020 CARES Act Training Document, and the more recent February 8, 2021 Training Document summarizing the nine bankruptcy amendments contained in the December 27, 2020 Consolidated Appropriations Act.

February 19, 2021 marked the one-year anniversary of the new Subchapter V of Chapter 11 for small business reorganizations, and Rhode Island has the lonely distinction of being the only district in the U.S. that has not yet received this type of case filing. A year ago (and prior to COVID completely upending our lives), we held a live training with members of the Bar to review the new Subchapter V provisions and rules, which presentation is available on our website for refresher training. We highly encourage consideration of this subchapter when discussing bankruptcy options with potential small business debtors as it has some unique provisions which might be helpful.

The Court continues to assess the State of Rhode Island's coronavirus load, hospitalizations and death rates, and vaccine roll out in planning for the physical reopening of the Clerk's office and resumption of in-person courtroom proceedings. In this regard, we have spent considerable time and resources preparing for the safe return to our court space with new plexiglass, signage, PPE stations, and a contactless temperature scanning station. Please read the article on page 11 discussing the many safety efforts we have undertaken for the health and protection of our employees, our bankruptcy practitioners, our self-represented population and for the public at large. We greatly look forward to serving you in person in the not too distant future.

#### **Recent Court Decisions**

by Julia Blackburn Otero and Jon Pincince, Law Clerks

Here are short digests of recent noteworthy decisions of the Court. As always, published opinions and orders are available on the Court's website.

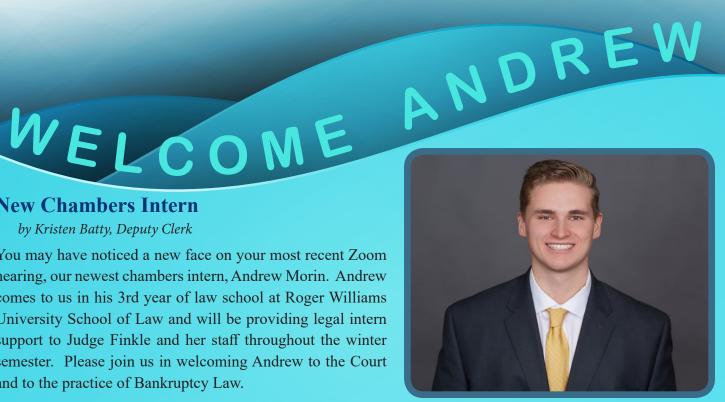
Cristoline Company, Inc. et al v. Douglas Diano, A.P. No. 19-01032 (In re Douglas Diano and Jennifer Diano, BK No. 19-10641) (Chapter 7) (June 11, 2020): In an adversary proceeding in which the plaintiffs alleged the debtor-defendant's debt to them based on state and federal law claims is non-dischargeable under Bankruptcy Code § 523, the Court granted in part and denied in part the defendant's motion to dismiss and granted the plaintiffs leave to amend their complaint in accordance with the ruling. The Court held that (1) it did have subject matter jurisdiction over the claims; (2) the individual plaintiff should be dismissed from the proceeding for failing to allege any injury; (3) the constructive fraud claim should be dismissed due to insufficient pleading; (4) the common law misappropriation claim should be dismissed as there is no such common law claim under Rhode Island law: (5) the civil conspiracy claim should be dismissed as it is not an independent basis of liability; and (6) the trade secret misappropriation, tortious interference with business relationships, RICO, and Computer Fraud and Abuse Act claims did state claims upon which relief could be granted and should not be dismissed.

William K. Harrington, United States Trustee for Region One v. Antonio G. Portunato, III (In re Antonio G. Portunato, BK. No. 17-11614) (Chapter 7) (September 17, 2020): After trial in an adversary proceeding in which the United States Trustee (UST) alleged the debtor-defendant should be denied a discharge under Bankruptcy Code § 727(a)(2) and (4), the Court concluded that (1) with respect to Count I, the UST did not prove by a preponderance of the evidence that the defendant "knowingly and fraudulently, in or in connection with the case— (A) made a false oath or account;" and (2) with respect to part of Count II and the entirety of Count III, the UST proved by a preponderance of the evidence that the defendant did in fact conceal, transfer, and remove property of the estate after the petition date with the actual intent to hinder, delay, or defraud his creditors and the chapter 7 trustee. Therefore, the defendant was denied a discharge of his debts under § 727(a)(2)(B).

#### **New Chambers Intern**

by Kristen Batty, Deputy Clerk

You may have noticed a new face on your most recent Zoom hearing, our newest chambers intern, Andrew Morin. Andrew comes to us in his 3rd year of law school at Roger Williams University School of Law and will be providing legal intern support to Judge Finkle and her staff throughout the winter semester. Please join us in welcoming Andrew to the Court and to the practice of Bankruptcy Law.



### **Chart of Local Rule Amendments Since Last Publication**

by Pam Ricciarelli, Courtroom/Calendar Clerk

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Local Rule 1006-1 - Filing Fee (Amended 9/16/20)	Paragraph (a) has been restyled and amended to include debited and ACH withdrawal as additional manners of payment permissible by a debtor.	
	Paragraph (b), entitled <i>Dishonored Payment</i> , is new and removes the reference to a dishonored check and replaces with any form of dishonored payment made to the Court.	
	Prior paragraph (b) re-lettered paragraph (c) and all remaining paragraphs re-lettered.	
Local Rule 3002-1 - Filing, Amending, Proof of Claim or Interest (Amended 9/16/20)	This rule was amended to make it applicable to amended proofs of claim as well as to original claims.	
	Paragraph (e) was amended to instruct the filer of the proof of claim to highlight the amendment.	
Local Rule 5001-2 - Clerk's Office (Amended 2/11/2021)	Subparagraph (c)(1) amends the requirements for self-represented parties to apply to use the Electronic Drop Box (EDB). When filing the Application and Declaration with the initial petition, the party must now attach a copy of their government issued photo ID as well as the completed Application for Access to the EDB. If the party has a prior pending case, only the completed Application and Declaration need be emailed to the Clerk. Once approved, all future document submissions may be made directly in the EDB.	
	Subparagraph (c)(2) is replaced and now addresses the signature requirements for self-represented parties who have submitted an Application and Declaration to use the EDB. A hard copy of the Application and Declaration must be signed under oath and provided to the Clerk's office within 14 days of the original email, either by mail or deposited in the Court's physical drop box.	
	Subparagraph (c)(3) is replaced and the title changed to <i>Signatures After the Approval of the Application and Declaration</i> . This subparagraph sets forth the signature requirements for all future submissions to the EDB when a signature is required to be under oath. The signature line must either include (a) an image of the filer's signature; or (b) an "/s/" with the filer's full name.	

Subparagraph (c)(4) is amended to remove the reference to the Clerk stamping the original documents. Subparagraph (c)(5) is amended to remove the reference to potential sanctions. The amendment specifies that submission of the signed Application and Declaration and use of the EDB link to submit case documents to the Clerk, has the same force and effect as physically signing a document and constitutes the filer's signature for the purpose of Fed. R. Bank. P 9011. Local Rule 5079-1 - Fees- Form of Payment The manner of payment was amended to include payment (Amended 9/16/20) by debit card or ACH withdrawal, as well as to remove the reference to a dishonored check. The rule now applies to any form of dishonored payment made to the Court. **Local Rule 9018-1 – Filing Under Seal** Paragraph (a) was amended to remove reference to electronic filers. (Amended 2/11/2021) Subparagraph (a)(1) was eliminated and replaced with a new (a)(1) entitled Motion to Seal and Proposed Order. This new subparagraph specifies the requirements for filing a Motion to Seal. The Motion to Seal should be filed with proper notice to parties, and include a statement under oath setting forth (a) the grounds for requesting the sealing of the document(s); (b) the duration of time the document(s) should remain sealed; and (c) include a proposed order. New subparagraph (a)(2), entitled *Document(s)* Sought to be Sealed, requires that the document(s) sought to be sealed be filed with the Clerk in paper form (not electronically) or on a USB key, in a sealed envelope clearly labeled "FILED SUBJECT TO PENDING MOTION TO SEAL". Paragraph (b), entitled *Notice of the Motion to Seal*, was amended to reflect that only the Motion to Seal, not the underlying document(s) requested to be sealed, are to be served on all parties, unless the movant requests approval of limited notice or ex parte relief. New subparagraph (b)(1), entitled *Limiting Notice*, permits the movant, with good cause, to request limiting notice of the Motion to Seal, if appropriate.



New subparagraph (b)(2), entitled *Ex Parte Relief*, requires the movant requesting *ex parte* relief to comply with LBR 9013-2(e).

Paragraph (c) has been amended to specify that a court order is required to place document(s) under seal. Its new title is *Order to Seal Document(s)*. The proposed order (to be submitted with the motion to seal) must identify the parties who may have access to the sealed document(s); as well as the duration of time the document(s) should remain under seal.

Subparagraph(s) (d)(1) - (4) are new and set forth the Court's handling and disposition of document(s) sought to be sealed; their disposition when relief is denied or when granted; and their disposition upon expiration of the seal order or those without an expiration date.

Paragraph (e), entitled *Motion to Seal a Previously Filed Document,* requires a party to comply with paragraphs (a) and (b) of this rule.

Paragraph (f), entitled *Relief from Seal Order*, is new. Parties seeking relief from a prior order to seal shall do so by motion, with proper notice.

Paragraph (g), entitled *Seal by Court Sua Sponte*, is new. This provision permits the Court, for good and sufficient cause, to *sua sponte* seal any document(s) pursuant to this rule, or to *sua sponte* order that a document(s) not be released for online viewing.

Paragraph (h), entitled *Attachments or Exhibits to Proofs* of Claims or Other Documents, is new. If an attachment or exhibit to a proof of claim includes medical information whose unrestricted disclosure is not appropriate, the Clerk, without an order, may restrict access to the document in the Court's electronic filing system. The Clerk does not have a responsibility to locate or identify such information and this type of restricted access does not preclude a party in interest from requesting that the private event be terminated. See also, LBR 9037-1(a)(3)(C).

R.I. Local Form 3015-3. Order Confirming Chapter 13 Plan (Amended 9/16/20)

Paragraph 5 was amended to correct the mailing address for the Chapter 13 Trustee.

#### "How do I...

by Jennifer Davis, Case Administrator

#### "How Do I ... File a Supplemental Proof of Claim for CARES Forbearance Claim"

The Director of the Administrative Office of the U.S. Courts has issued a new Director Form for filing the supplemental proof of claim for CARES Act Forbearance Claim authorized by the Consolidated Appropriations Act of 2021 (the CAA). See, Director's Form 4100S, Supplemental Proof of Claim for CARES Forbearance Claim.

In addition, the Bankruptcy Court has created a new case filing event titled: Supplemental Proof of Claim for CARES Forbearance Claim for filing this new form. The event is designed to address temporary amendments to sections 501, 502 and 1329 of the Bankruptcy Code made by the CAA amendments, which sunset on December 27, 2021, unless extended by Congress. Director's Form 4100S will be retired after that date and the event removed from our ECF system.

#### NEW EVENT: SUPPLEMENTAL PROOF OF CLAIM FOR CARES FORBEARANCE CLAIM

1) Click on Bankruptcy>Claims Action:



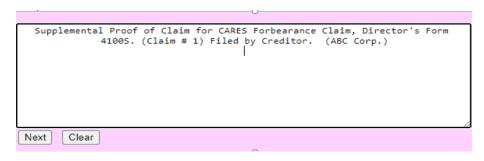
2) Select the event, "Supplemental Proof of Claim for CARES Forbearance Claim":

Available Events (click to select events)	Selected Events (click to remove events)
Notice of Mortgage Forbearance	Supplemental Proof of Claim for CARES Forbearance Claim
Notice of Mortgage Payment Change	
Notice of Postpetition Mortgage Fees, Expenses, and Charges	
Proof of Claim Attachment 3001(c)(2)(C)	
Response to Notice of Final Cure Payment Rule 3002.1	
Supplement to Claim	
Supplemental Proof of Claim for CARES Forbearance Claim	
Transfer/Assignment of Claim (fee)	
Withdrawal of Claim (ndf or toxt only)	

3) Chose the Proof of Claim that the Supplement relates to:



4) Final docket text appears. Click, "Next".



#### "How Do I ... File a Motion Under § 1328(i) for Discharge?"

The Consolidated Appropriations Act of 2021 (the CAA) amends § 1328(i) of the Bankruptcy Code by authorizing the Court, in its discretion, to grant a discharge to a Chapter 13 debtor who has:

- (1) on or after March 13, 2020, defaulted on not more than three monthly residential mortgage payments because of a material COVID-19 related financial hardship; or
- (2) entered into a qualifying loan modification or forbearance agreement with a residential mortgage lender even though the confirmed plan provides for curing defaults on such mortgage.

The Bankruptcy Court has created a new case filing event titled: *Motion Under § 1328(i) for Discharge* for filing this type of motion. This provision sunsets on December 27, 2021, unless extended by Congress, and after that date the event will be retired and removed from our ECF system.

#### NEW EVENT: MOTION UNDER § 1328(i) FOR DISCHARGE

1) Click on Bankruptcy>Motions/Applications:



2) Select the event, "Motion Under § 1328(i) for Discharge":



3) Final docket text appears. Click, "Next".

Motion Under 1328( $\underline{i}$ ) for Discharge filed by Debtor. Objections to Motion due: 3/15/2021, plus an additional 3 days if served by mail or otherwise allowed under FRBP 9006(f).

#### "How Do I ... File a Motion to Seal?"

In January of 2021, the Administrative Office of the U.S. Courts provided notice of a potential national security breach involving the Judiciary's Case Management/Electronic Case Filing system (CM/ECF) and issued guidelines for protecting highly sensitive documents in the Courts. In response, effective February 11, 2021, the Rhode Island Bankruptcy Court amended Local Rule 9018-1, *Filing Under Seal*, and it's Motion to Seal event in ECF, to require that parties submit documents sought to be sealed to the Clerk either in paper form or on a USB key, outside of the Court's ECF system. Please refer to LBR 9018-1 and to this topic in our Electronic Filer User Manual for detailed filing instructions.

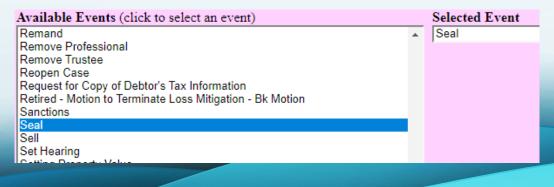
#### \*MODIFIED\* EVENT: MOTION TO SEAL

1) Click on either Bankruptcy or Adversary>Motion/Application;

**Note**: The document(s) you are requesting to be sealed should not be attached to the Motion to Seal and your motion should not disclose the information sought to be sealed.



2) Select the event, "Seal";



3) Please read the following warning screens closely for specific instructions on answering this question.

In addition to Seal are you seeking Limited Notice or Ex Parte Relief with this Motion			
○Yes ○No			
Next Clear			
WARNING! If you are seeking TO SEAL DOCUMENTS use this event. Should you have difficulty call the Court for assistance.			
IMPORTANT! Only the Motion to Seal may be filed electronically. Do not attach the documents you wish to seal to this event. Documents to be sealed or a USB key containing those documents must be placed in a sealed envelope or container marked FILED SUBJECT TO PENDING MOTION TO SEAL and delivered or mailed to the Clerks office immediately. See RI LBR 9018-1.			
IMPORTANT NOTICE! If you select YES to the question below, this event will become a PRIVATE EVENT and an electronic notice (NEF) will NOT be generated. You must serve the appropriate parties in accordance with Local Rule 9013-2 and file a certificate of service with the Court.  Next Clear			
IMPORTANT: If you select NO to the question below the court will designate the Motion to Seal a RESTRICTED EVENT. Electronic notice that a Motion to Seal was filed WILL be generated, however access to view the motion is restricted to the filer and the Court.			
Unless your motion also requests Approval to Limit Notice, you must serve the Motion to Seal, but not the documents sought to be sealed, to the appropriate parties in accordance with Local Rule 9013-2 and file a certificate of service with the Court.			
Next Clear			

4) Final docket text appears. Click, "Next".

#### Protocol for Attending a Virtual Hearing on Zoom.gov

by Pam Ricciarelli, Courtroom/Calendar Clerk

What should I wear for a virtual hearing? Although all hearings are held virtually using the Zoom.gov video platform, attorneys and all parties attending are still required to adhere to LBR 5072-1(f) regarding courtroom attire.

Please don't be late! All respective parties for scheduled hearings should log into the Zoom.gov video platform at least 10 minutes prior to the start of the Court calendar to enable sufficient time for attendance records and testing.

Can you hear me? When entering onto the Zoom. gov video platform, remember to unmute your microphone and turn on your video to enable the

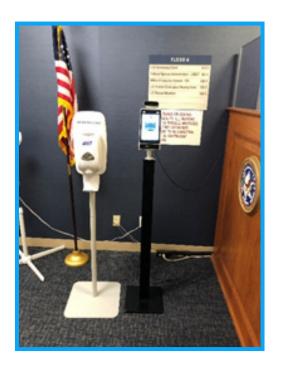
courtroom deputy to perform a brief audio and video check. A member of our IT department is always readily available on the Zoom.gov video platform to assist with audio and/or video issues if needed.

Who are you? Although all the parties attending a hearing are visible on video, our Electronic Courtroom Reporter Operator records the session using audio only and therefore, it is important that you announce your name for the record when your case is called and at the direction of the courtroom deputy. See LBR 5072-1(a).

#### **New COVID 19 Safety Protocols for Bankruptcy Court Access**

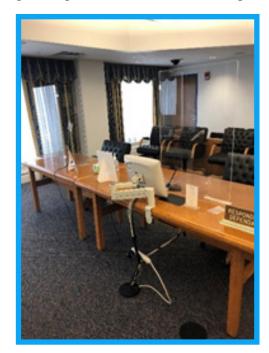
by Kristen Batty, Chief Deputy Clerk

In accordance with the Court's General Order 20-012, for the health and safety of all staff and visitors to the Bankruptcy Court, we have implemented a contactless temperature scanner system and health screening process for entry to the Court's premises. The temperature scanner is located next to the Court Security Officer's security booth, directly in front of the elevators on the 6th floor. Known visitors and staff who intend to come to the court will be sent a text message to their cell phone the night before visiting. The text message will ask a series of standard COVID 19 health related questions and if successfully answered, will indicate approval to visit, and a second text message with a QR code will be sent, to be used upon arrival at the temperature scanner to read your temperature. The scanner will record and display your temperature. A temperature of 100.4 or below is considered normal and you will be able to enter Bankruptcy Court space. For unannounced visitors, the health screening process can be done in the hallway prior to using the temperature scanner.



In addition to the temperature scanning system, the Bankruptcy Courtroom has been outfitted with plexiglass barriers throughout the space as a further health protection – this includes the Judge's bench, counsel tables, Courtroom Deputy desk and staff bench, to ensure the safest work environment for everyone -- staff, practitioners and the public. All persons in the building are required to wear masks and to practice social distancing by remaining





six feet apart from one another. A supply of personal protective equipment (PPE) is also located in the courtroom as you walk through the double doors and on the counsel tables – hand sanitizer, disinfecting wipes, tissues, and microphone coverings. Your health and safety are very important to us! If you have questions about our COVID 19 safety protocols, please contact Chief Deputy Kristen Batty at Kristen batty@rib.uscourts.gov or by telephone at (401) 626-3133.

#### **Enhanced Event: Request for Certified Copy**

by Amy Geraghty, Operations Supervisor

In our last issue of On the Docket, we were excited to introduce a new e-filing event called: *Request for Certified Copy*, which is available for Electronic Filers and Limited Users. At that time, the event was written so that only an order event could be selected from the docket for certification. Recently, through customer service outreach, we discovered this limitation and we have since enhanced the event to allow the filer to select *any* filing on the case docket for certification.

## Miscellaneous Bankruptcy Filing Fee Changes Effective December 1, 2020

by Amy Geraghty, Operations Supervisor

At its March 2020 session, the Judicial Conference of the U.S. Courts approved adjustments to the Bankruptcy Court Miscellaneous Fee Schedule, which took effect on December 1, 2020. Click here for a list of all miscellaneous fee increases.

Notable among these changes is the increase to the administrative fee assessed at filing in every bankruptcy case, which changes the total fee due to file a bankruptcy case under any chapter. The administrative fee for filing a Chapter 7, 12 or 13 case is now \$78, and is \$571 for filing a Chapter 9, 11, or 15 case.

Combining the revised administrative fees with the current statutory fees, the total new case filing fee for each bankruptcy chapter is as follows:

Chapter	Old Fee	New Fee
For filing a petition, or for filing a motion to divide a joint case, under <b>Chapter 7</b> :	\$335	\$338
For filing a petition, or for filing a motion to divide a joint case, under <b>Chapter 12</b> :	\$275	\$278
For filing a petition, or for filing a motion to divide a joint case, under <b>Chapter 13</b> :	\$310	\$313
For filing a petition under Chapter 9, 11, or 15:	\$1,717	\$1,738
For filing a motion to divide a joint case under Chapter 11:	\$1,717	\$1738

#### **Bankruptcy Courtroom Upgrades**

by Steve Stricklett, PC Systems Administrator

The Rhode Island Bankruptcy Court's *Arthur N. Votolato Courtroom* recently underwent a complete audio and video upgrade to bring it up to the latest technology. Below is a summary of these improvements:

#### 1. An Upgraded Digital Audio System:

The audio upgrade migrated the old analog audio system to a new digital audio technology, which provides a much clearer audio recording. This will be most noticeable by attorneys and other users when listening to the hearing audio file on the case docket (which gets uploaded after a court hearing), as well as the audio files provided to a transcriptionist for creating an official transcript of the hearing, when needed.

#### 2. High-Definition Video Cameras:

The high-definition video camera enhancement provides a higher quality video output when using the courtroom video conferencing system, resulting in an improved view of the courtroom and its participants by external parties. These cameras have also been moved to new locations to provide a better viewing angle which people on the video conference will notice.

#### 3. High-Definition Video Displays:

The high-definition video displays are setup throughout the courtroom on the counsel tables, witness stand, judge's bench and court workstations, and are for displaying documents or other data as part of a party's evidence presentation during a court proceeding. This upgrade also includes replacement large screen monitors attached to the ceiling for displaying evidence throughout the courtroom, which displays are closer to counsel tables for improved viewing, as well as for visitors or parties sitting in the courtroom gallery.

## 4. Updated Document Camera for Evidence Presentation:

A new document camera has been installed which is a high-definition unit that provides a higher-quality image of the document placed on it, for evidence presentation during a hearing or trial. The camera includes standard ZOOM options for displaying a specific section of the evidence when needed.

#### 5. Updated Assisted Listening Equipment:

A new replacement assisted listening device system was installed which provides total courtroom coverage for the listener. These units provide a much cleaner audio to the person using the assisted listening headphones. The unit includes six separate headphone sets to enable multiple users to use the system at the same time in the courtroom.

#### 6. Presentation Lectern/Podium:

A new courtroom podium/lectern has been added that is a larger unit with a flat top surface for improved functionality. The new design makes it much easier to place reference documents on the surface while presenting before the Court. The new lectern also has an omnidirectional microphone to allow counsel or litigants to more easily move away from the lectern when speaking, yet still be recorded for the record.



#### **Browser Recommendation**

The Rhode Island Bankruptcy Court's website, www.rib.uscourts.gov, is best viewed with the following browsers: Chrome, Firefox, or the new Edge. Microsoft has put Internet Explorer at end-of-life, and has the potential to display errors on modern website pages.

The following links will take you to the respective downloads:

Google Chrome - https://www.google.com/chrome/

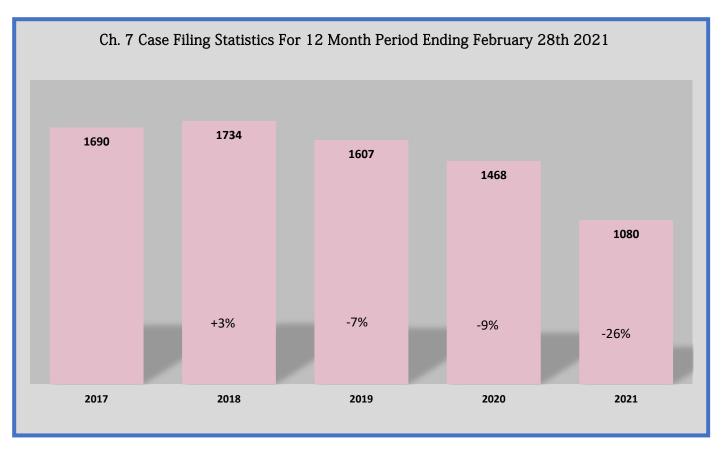
Mozilla Firefox - https://www.mozilla.org/en-US/

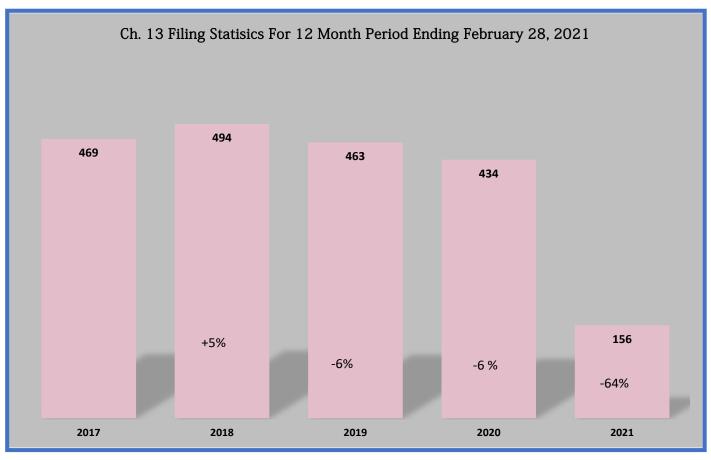
Microsoft Edge - https://www.microsoft.com/en-us/edge

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### Case Filing Statistics for Period Ending February 28, 2021

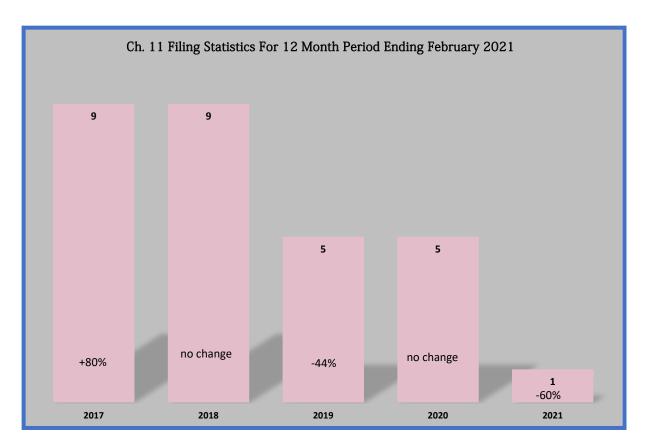
by Dina Fortes, ECF Analyst

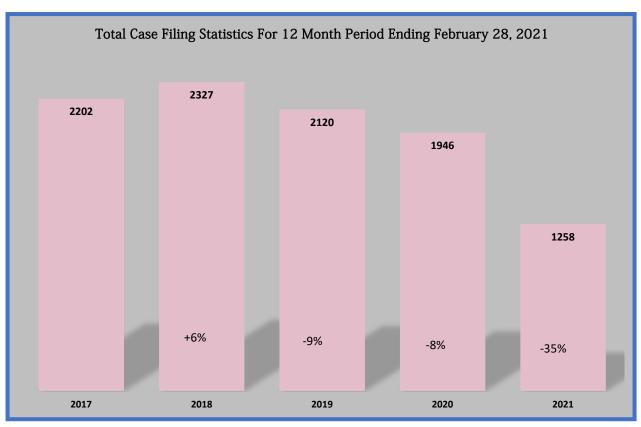




## Case Filing Statistics for Period Ending February 28, 2021

(continued from page 14)





#### UPCOMING COURT HOLIDAY CLOSING DATES

Memorial Day - Monday, May 31, 2021
Independence Day (observed) - Monday, July 5, 2021
Victory Day - Monday, August 9, 2021
Labor Day - Monday, September 6, 2021
Columbus Day - Monday, October 11, 2021
Veterans Day - Thursday, November 11, 2021
Thanksgiving Day - Thursday, November 25, 2021
Day After Thanksgiving - Friday, November 26, 2021
Christmas Day (Observed) - Friday, December 24, 2021
New Year's Day (Observed) - Friday, December 31, 2021

# CONTACT PUBLICATION STAFF

If you have any comments regarding this issue or want to suggest ideas 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 www.rib.uscourts.gov for local filing information.

Thank you.

Please Note: Clerk's Office staff is not permitted to give legal advice.