

# ON THE DOCKET

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## Inner Workings: News and Advice

By Susan Thurston, Clerk of Court

Welcome to our Spring 2017 edition of our court newsletter, *On the Docket*. I think we can all agree that this past winter wasn't as bad as many prior years, but it sure is nice to look forward to the upcoming warmer months in Rhode Island. While you should be receiving this newsletter in May, just last month we celebrated Financial Literacy Month and in case you missed it, our web site has an excellent [financial literacy page](#) containing descriptions and links to numerous free financial literacy resources. We encourage you to share this information with not only your clients, but also with family, your children, friends and anyone you know who could benefit from an increased understanding of ways to improve their financial wellness.

Also in April, the First Circuit courts experienced two significant

clerk retirements. On April 1, 2017, David DiMarzio, clerk of the U.S. District Court in Rhode Island, retired after serving in that position for twenty years. David was a strong supporter of the Bankruptcy Court and under his leadership, the District Court provided financial and staffing resources to bankruptcy during many difficult budget years. We wish David and his wife Denise the very best in his well-deserved retirement.

The second recent retirement is that of Bankruptcy Clerk Jim Lynch of the District of Massachusetts. Jim retired on April 30, 2017 after thirty nine years of service in the judiciary. Many of you know Jim as a fellow Rhode Islander who started his judiciary career at the U.S. District Court in Rhode Island in early 1978 and soon thereafter, when the District and Bankruptcy Courts de-consolidated, Jim was named the first Bankruptcy Clerk for the district of Rhode Island in November 1978. Jim left that position in 1994 to

## Inner Workings

*(Continued from Page 1)*

become the U.S. Trustee for Region 1 in Boston. However, the call of court administration brought Jim back into the judiciary in September 1995, when he was selected as the Bankruptcy Clerk for the District of Massachusetts, a position he held for 21 years. First Circuit Bankruptcy Appellate Panel clerk Molly Sharon was recently selected to replace Jim as Bankruptcy Clerk in Massachusetts and she assumes her position on May 1, 2017. Please join me in also wishing Jim a much deserved retirement and in welcoming Molly to the Massachusetts Bankruptcy Court.

Lastly, I want to share news of our new Pro Bono Legal Clinic. The Rhode Island Bankruptcy Legal Clinic (“the Clinic”) is a free legal clinic that is a partnership between the U.S. Bankruptcy Court for the District of Rhode Island and various members of the Rhode Island bankruptcy legal community. In January, the Court, working with its Attorney Advisory Committee, launched a pilot period for the Clinic and during the first quarter of the year, we defined the Clinic procedures, forms, space and administration requirements. The Clinic provides debtors with an opportunity to meet, one-on-one, with a volunteer bankruptcy attorney for a free half-hour consultation. Volunteer attorneys provide limited legal advice to individuals without an attorney by answering their questions about bankruptcy and

required paperwork, as well as how bankruptcy may be used to help prevent foreclosure. The Clinic is open two days a month - the first and third Wednesday of the month from 11:00 AM to 12:00 PM.

In April, the Court completed the pilot phase and moved to full operations with a training for our volunteer attorneys. On behalf of the Court, we would like to acknowledge our sincere appreciation for the support and dedication shown by our Clinic volunteer bankruptcy attorneys:

John Boyajian	Chris Lefebvre
Stacy Ferrara	Stephen Levesque
Brian Fogarty	George Lough III
Peter Furness	Felicia Manni Paquette
Lisa Geremia	Charles Pisaturo
Janet Goldman	Jack Pitts
Ed Gomes	Tom Quinn
Jacqueline Grasso	Russell Raskin
David Hathaway	John Simonian
Steven Hart	Greg Sorbello
Kevin Heitke	Vito Sciolto
Peter Iascone	Paul Waldman

Detailed Clinic information and an appointment scheduler are available on our website [Clinic page](#). Please share this information and our [Clinic brochure](#) with those who could benefit from its use.

# Bankruptcy Court Practice Tips

By the Honorable Diane Finkle and her staff

## Adversary Proceedings

### *Statements Regarding Entry of Final Judgment*

Federal Rules of Bankruptcy Procedure [7008](#) and [7012\(b\)](#) require pleadings to include a statement that the pleader does or does not consent to entry of a judgment by the bankruptcy court. If the pleadings fail to so state, the Court may include such a requirement in the scheduling order or it may deem the silence by the parties to be implied consent to entry of a final judgment. Parties are reminded to comply with these requirements.

### *Requests to Extend Discovery Deadline*

When moving to extend the discovery deadline set by the Court in a scheduling order, the movant(s) should also request to extend all other applicable deadlines in the order if such extension will impact these subsequent deadlines, and the parties should propose new deadline dates.

## General Tips

### *Waiver of Credit Counseling/Financial Management Courses*

When seeking a waiver of the credit counseling and financial management courses under [11 U.S.C. § 109\(h\)](#) due to mental incapacity, there must be filed on behalf of the debtor (under seal) a probate order appointing a guardian due to mental incapacity or medical evidence of a diagnosis of mental incapacity or other medical evidence, such as a doctor's letter, explaining why the Debtor is unable to satisfy this requirement. A durable power of attorney (which is signed by the debtor) is not sufficient evidence of mental incapacity.

### *Motions to Reconsider or Vacate Orders*

As a starting point, motions for reconsideration are *not* recognized by the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure. *See In re Arroyo*, 544 B.R. 751, 756 (Bankr. D.P.R. 2015). Bankruptcy courts will generally treat a motion for reconsideration of a bankruptcy court's order or judgment as either a motion to alter or amend a judgment under [Rule 59\(e\)](#), made applicable in bankruptcy pursuant to [Bankruptcy Rule 9023](#), or as a motion for relief from a final judgment or order under [Rule 60\(b\)](#), made applicable in bankruptcy pursuant to [Bankruptcy Rule 9024](#). *See, e.g., Fisher v. Kadant, Inc.*, 589 F.3d 505, 512 (1st Cir. 2009).

When moving to reconsider or vacate an order or judgment entered by the Court, the movant should state the statutory predicate under which such relief is sought – Rule 59(e) or Rule 60(b) (or other applicable rule or statute) – and the legal basis supporting the requested relief. Bear in mind that a motion under Rule 59(e) can only be brought if filed within 14 days of the entry of the order/judgment sought to be reconsidered. When proceeding under Rule 60(b), the motion must also cite to the specific subsection(s) of the rule relied upon.

## Recent Court Opinions

By Louisa Gibbs and Jonathan Pincince, Law Clerks

Here is a short digest of some noteworthy opinions and orders from the Court. As always, the Court's published opinions and noteworthy orders are available on the [Court's website](#).

***In re Carpenter*, BK No. 16-10150 (Chapter 7) (October 27, 2016):** On an issue of first impression, the Court overruled the creditor's objection to the debtor's motion to avoid a judicial lien attached to the debtor's mixed-use property because the property qualified for the Rhode Island statutory homestead exemption ("RI Homestead"). The Court was dubious that the RI Homestead precluded its application to an individual's primary residence if it was also used for commercial purposes. The Court held that the actual use of the property controlled in determining whether it qualified for the RI Homestead. Under the particular circumstances, the evidence established that the Debtor, who had obtained zoning approval to convert a portion of the commercial property for his personal residential use, actually used the property predominantly for such residential purposes.

***In re Bouchard*, BK No. 15-10543 (Chapter 13) (December 5, 2016):** The Court granted the creditor ex-spouse's motion to dismiss the case under U.S.C. § 1307(c), finding that the totality of the circumstances demonstrated that the Debtor, throughout the pendency of the case, had intentionally manipulated his income and expenses, and failed to disclose material financial information. Therefore, he lacked good faith in the filing of his bankruptcy petition, and it was in the best interest of the debtor's creditors to dismiss the case.

***Boudreau v. RI Division of Taxation*, AP No. 16-01001 (*In re Boudreau*, BK No. 15-10162) (Chapter 7) (January 24, 2017):** In an adversary proceeding in which the Debtor sought to discharge his outstanding state income taxes, the Court granted in part and denied in part the Rhode Island Division of Taxation's motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). The Court was bound by the First Circuit's decision in *In re Fahey*, 779 F.3d 1 (1st Cir. 2015) to hold that the tax and interest on late-filed tax returns were not dischargeable under Bankruptcy Code § 523(a)(1)(B). However, the associated penalties assessed against the Debtor were dischargeable because the dischargeability of tax penalties falls instead under § 523(a)(7).

***In re McKenna*, BK No. 17-10314 (Chapter 13) (April 14, 2017):** The Court denied the creditor's motion for a declaration that Rule 11 sanctions imposed by the state court were exempt from the automatic stay under Bankruptcy Code § 362(b)(4). While initial proceedings in non-bankruptcy forums to determine if such sanctions should be imposed and what they should be are exempt from the stay, subsequent proceedings to enforce and collect on any resulting monetary judgment imposed under Rule 11 are subject to the stay. The Court found that § 362(b)(4) expressly excludes from the exception "the enforcement of a judgment other than a monetary judgment."



## Procedure Spotlight

# Adversary Proceedings - Part 1: Complaint

*By Jennifer Davis, Case Manager*

An Adversary Proceeding (AP) is a lawsuit filed within the bankruptcy case. It is an action commenced by a plaintiff filing a complaint against one or more defendants. An adversary proceeding resembles a typical civil case filed in the U.S. District Court or in state court. For purposes of this article, we will review the procedure for filing an adversary proceeding in three sections (the complaint, service of process and the answer) and will cover section one, the complaint, today.

An AP is commenced by the filing of a pleading called a complaint, which is issued an Adversary Proceeding number. The person filing the complaint is known as the Plaintiff; the person(s)/entity against whom the complaint is brought is known as the Defendant(s). Adversary proceeding cases often involve questions about the dischargeability of a particular debt, a demand for the denial of discharge of all debts, or a demand for the recovery of a possible preference payments or fraudulent transfer of property. AP cases may be filed by a creditor, ex-spouse, Trustee or a debtor for a variety of relief sought including the possible discharge of a student loan or to determine the validity of a lien. For a complete list of the types of proceedings, please refer to [Fed. R. Bankr. P. 7001](#).

The Complaint consists of five main parts:

1. The Caption, which identifies the court, bankruptcy caption, and party information for the adversary;
2. The Name and Address of the plaintiff and the defendant. These are usually listed in the first and second paragraphs respectively. If there is more than one defendant, list each defendant's name and address in separate additional paragraphs;
3. The Jurisdiction or reason your case is being filed in this Bankruptcy Court, *see* [28 U.S.C. § 1334](#), and a statement that the pleader does or does not consent to entry of final orders or judgment by the bankruptcy court. *See* [Fed. R. Bankr. P. 7008](#);
4. The Allegations or claims that you are making against the defendant. Place each allegation in a short, clearly-written paragraph. *See* [Rule 7010](#) of the Federal Rules of Bankruptcy Procedure and [Rule 10\(b\)](#) of the Federal Rules of Civil Procedure.
5. The Relief you are seeking from the Court. This can be money or something you want the Judge to make the defendant do or stop doing. This information is usually written in the last paragraph of the complaint.

The Court's electronic filing system automatically generates the summons.

There is a statutory filing fee at the time you file your complaint. *See* [28 U.S.C. § 1930\(b\)](#), and the Bankruptcy Court's [Miscellaneous Fee Schedule, item 6](#). This fee is waived if the debtor is the plaintiff, or for certain child support creditors.



## RI Bankruptcy Court Internship Program

*By Pamela Ricciarelli, Case Manager*

For more than 20 years, the RI Bankruptcy Court Internship Program has provided students with an opportunity to experience what it is like to work at the Court and to gain knowledge about the bankruptcy process. Many of our past interns have gone on to become lawyers.

Students learn about the roles of the Judge, the Trustee, the primary functions of the Court, and obtain a basic knowledge of the bankruptcy rules and procedures. They also provide administrative support to the Operations Department in the Clerk's office. Duties may include answering and directing telephone calls, performing quality control of case filings, data entry and analysis, observing court sessions and attending a meeting of creditors alongside a case trustee as well as, assisting in any projects that are ongoing during the time of the student's internship.

Interns are not compensated by the Court, but may receive a stipend from the [RI State Government Internship Program](#). Applicants must be U.S. Citizens or eligible to work in the United States. Legal experience is preferred but not required. The Court looks for certain qualifications such as substantial clerical skills, proficiency in Microsoft Office (Word, Excel, etc.) and Adobe Acrobat, and a good knowledge of Microsoft Windows computer system. Candidates must be detail oriented with sound judgment and high ethics.

For further information or to submit a resume for future internship openings, please contact Amy Geraghty, Operations Supervisor via email at [Amy\\_Geraghty@rib.uscourts.gov](mailto:Amy_Geraghty@rib.uscourts.gov).

# Tips and Tricks

By Dina Fortes, Case Manager

**1. Notice of Mortgage Payment Change and Notice of Final Cure Mortgage Payment Processes and Reminders:** [Fed. R. Bankr. P. 3002.1](#) went into effect on December 1, 2011, and provides the process for chapter 13 holders of claims secured by security interest in debtor's principal residence to provide certain notices of payment and related fee changes.

When filing a **Notice of Mortgage Payment Change** be sure to use the new [Official Form B410](#) attached to the proof of claim in regards to the debtor's principal residence. The Notice of Mortgage Payment Change must be served by first class mail on the debtor and the debtor's attorney (if represented). Please note that once the Notice of Mortgage Payment Change is filed in the Court's ECF system (by choosing Bankruptcy>Claim Actions>Notice of Mortgage Payment Change), it will appear as a supplement to the claim on the claims register, but it will not receive a document number or appear on the public docket. \* Note: If there is no claim on record for the creditor, your pleading will not be viewable to non-cmecf users.

The Notice of Final Cure of Mortgage Payment is filed by the Chapter 13 Trustee or the debtor within the 30 days after the plan payments have been completed. There is a 21- day objection deadline for the notice. A response or objection to the notice should be filed by choosing Bankruptcy>Claims Actions>Response to Notice of Final Cure Payment Rule 3002.1. This entry will appear on the claims register. If the creditor objects and indicates that the arrearage is in fact not cured, a Motion for Determination will need to be filed by the trustee or the debtor. Once the motion is filed, there will be a 14 day objection period giving the creditor time to respond.

## 2. Frequently Asked Questions:

- Which log-in do I use?

Each Federal Court assigns a login and password to that Court's electronic filing system ("CM/ECF"). For example, your RI Federal District Court credentials cannot be used to gain access to the Bankruptcy Court's electronic filing system; nor will your PACER login and password allow filing capabilities in either system. Please remember to store your passwords in a safe place!

- Which browser should I use?

The Court recommends using Internet Explorer or Firefox browsers when filing documents in the Court's ECF system. Keep in mind that Google Chrome is NOT compatible with this system.

- Where can I find a specific event?

The CM/ECF system offers a search feature. Once logged into the system, select search and type a word related to the document you are trying to file. When you find the event, proceed with the prompted screens to complete your filing.

**3. LBR 1005-1(d) - Required Response Time Language:** Effective December 1, 2016, Local Rules 1005-1, 2004-1, 3007-1 and 3011 were amended to reflect the change in response time after service provided in Federal Rule 9006(f). Required response time language must be included on all papers.

**Usual Papers.** In order to provide adequate notice to interested parties of the time to respond, every motion (except those set forth in paragraph (2) below), application, petition (not including bankruptcy petition), objection to claim or objection to exemption

filed with the clerk's office shall contain language substantially similar to the following, in single or double space and must appear in at least 11 point type:

*Within fourteen (14) days after service, if served electronically, as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if served by mail or other excepted means specified, any party against whom such paper has been served, or any other party who objects to the relief sought, shall serve and file an objection or other appropriate response to said paper with the Bankruptcy Court Clerk's Office, 380 Westminster Street, 6th Floor, Providence, RI 02903, (401) 626-3100. If no objection or other response is timely filed, the paper will be deemed unopposed and will be granted unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice requires otherwise.*

**Response Time Required on All Objections to Claim:** An objection to a claim(s) shall contain the following language which shall appear below the signature block of the objecting party, or otherwise conspicuously set forth within the objection:

*Within fourteen (14) days after service, if served electronically, as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if served by mail or other excepted means specified, any party against whom such paper has been served, or any other party who objects to the relief sought, shall serve and file an objection or other appropriate response to said paper with the Bankruptcy Court Clerk's Office, 380 Westminster Street, 6th Floor, Providence, RI 02903, (401) 626-3100. If no objection or other response is timely filed, the paper will be deemed unopposed and will be granted unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice requires otherwise. If you timely file such a response, you will be given thirty (30) days notice of the hearing date for this objection.*

Filings which fail to include, or are deficient for LBR 1005-1(d) response language, will be deemed defective and either stricken or terminated from the record and a corrective action required event will be entered stating the nature of the defect and giving instruction to re-file the document in corrected form. For those documents which fail to conform where a filing fee has been paid, the filer will have fourteen (14) days to re-file such documents in corrected form and the Court will associate the previously paid fee. If the corrected document is not filed before this deadline expires, a new filing fee will be required. See [LBR 5005-5\(a\)](#).

**Common filing deficiencies include:**

- Failure to include the response language in its entirety;
- Listing an incorrect phone number for the Court.
- Failure to include the **correct** response time in accordance with Fed. R. Bankr. P. 2002, 9006 and/or R.I. LBR 1005-1(d)(2);

**4. Debtor Electronic Bankruptcy Noticing (DeBN):** Any debtor, including pro se debtors in bankruptcy, can request to receive court notices and orders by email rather than by U.S. mail. This free program is known as "Debtor Electronic Bankruptcy Noticing" ("DeBN"). Information and sign-up forms are available at the Clerk's Office or [on our website](#). Please remember to share this information with your clients so they can receive court orders and notices more quickly via email.



# Summary of December 2016 Local Rule Amendments

By Amy Geraghty, Operations Supervisor

<b>Local Rule Amendments</b>	<b>Summary of Rhode Island Local Bankruptcy Rule Amendments Effective December 1, 2016</b>
<b>RULE 1002-1 PETITION - GENERAL</b>	<p>Subdivision (c) amended to remove language regarding the 180 day bar to refile a petition if a previous petition was dismissed for failure to timely file the creditor list.</p> <p>Subdivision (d)(3) and (d)(4) Amended to conform with the Amendment to Local Rule 1017-2(b).</p>
<b>RULE 1005-1 FILING PAPERS - REQUIREMENTS</b>	<p>Subdivision (d) amended to conform to the December 1, 2016 amendment to Federal Rule 9006(f) which removed service by electronic means, including ECF service, from the types of service allowing three added days to act or respond after being served.</p>
<b>RULE 1006-1 FILING FEE</b>	<p>Subdivision (d) and (f) amended to give the debtor the option to request relief under Local Rule 1017-2.</p>
<b>RULE 1007-1 LISTS, SCHEDULES AND STATEMENTS; TIME LIMITS; ORDER TO FILE MISSING DOCUMENTS AND NOTICE OF AUTOMATIC DISMISSAL FOR NON-COMPLIANCE; NOTICE IN CHAPTER 11</b>	<p>Subdivision (d). Technical amendment changing the term, “Lack of Prosecution” to “Lack of Compliance” and removing language regarding the 180 day bar to refile a petition</p>

<p><b>RULE 1017-2 DISMISSAL FOR LACK OF COMPLAINT</b></p>	<p>Technical amendment changing the term, “Lack of Prosecution” to “Lack of Compliance” in the title of the rule.</p> <p>Subdivision (b). Technical amendment changing the term, “Lack of Prosecution” to “Lack of Compliance” and modifying the name of the Notice of Intent to Order requiring compliance and notice of automatic dismissal for non-compliance.</p>
<p><b>RULE 2004-1 EXAMINATION</b></p>	<p>Subdivision (d)(2) amended to conform to the December 1, 2016 amendment to Federal Rule 9006(f) which removed service by electronic means, including ECF service, from the types of service allowing three added days to act or respond after being served.</p>
<p><b>RULE 3007-1 CLAIMS - OBJECTIONS</b></p>	<p>Subdivision (b) amended to conform to the December 1, 2016 amendment to Federal Rule 9006(f) which removed service by electronic means, including ECF service, from the types of service allowing three added days to act or respond after being served.</p>
<p><b>RULE 3011-1 UNCLAIMED FUNDS</b></p>	<p>Subdivision (3) amended to conform to the December 1, 2016 amendment to Federal Rule 9006(f) which removed service by electronic means, including ECF service, from the types of service allowing three added days to act or respond after being served</p>
<p><b>RULE 3015-3 CHAPTER 13 – CONFIRMATION</b></p>	<p>Subdivision (E) amended to conform give the debtor the option to request relief under Local Rule 1017-2.</p>

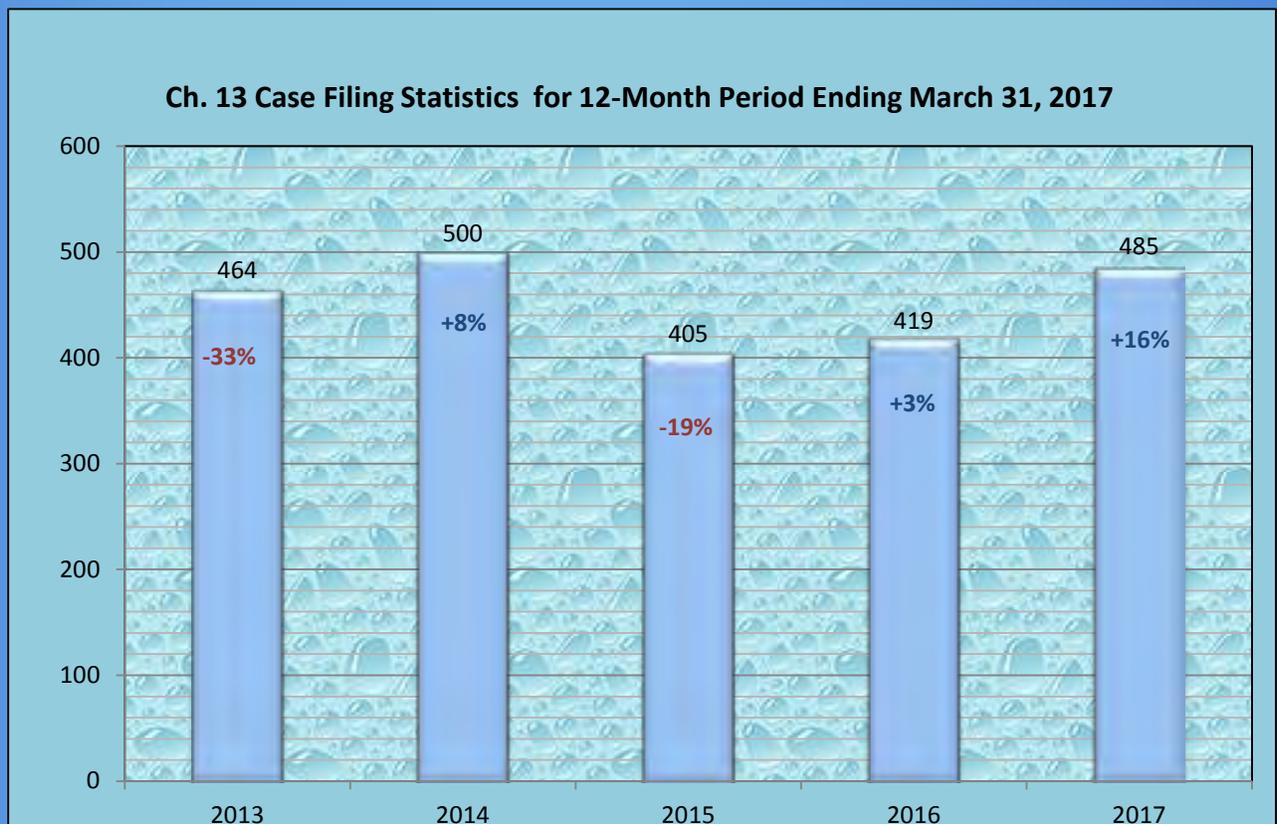
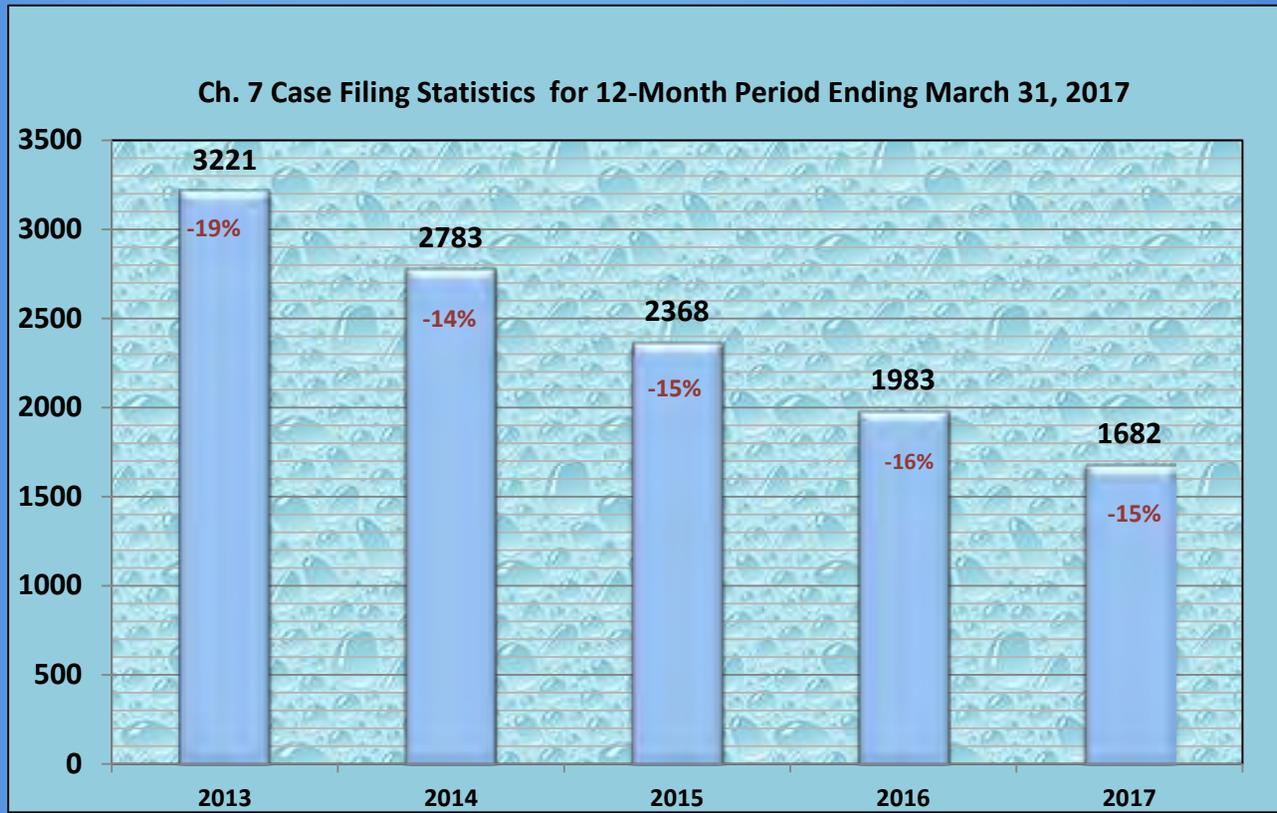
<b>RULE 4001-1 RELIEF FROM AUTOMATIC STAY</b>	Subdivision (D) amended to conform to the December 1, 2016 amendment to Federal Rule 9006(f) which removed service by electronic means, including ECF service, from the types of service allowing three added days to act or respond after being served.
<b>RULE 5005-4 ELECTRONIC FILING</b>	Subdivision (q) amended to include the courts process of striking a filing if the filing fee is not paid within seven days.
<b>RULE 5005-5 FILING OF PAPERS – PROCEDURE FOR STRIKING DEFECTIVE PLEADINGS AND OTHER DOCUMENTS</b>	Subdivision (a) amended to include that non-payment of filing fees may result in the underlying pleading being stricken or terminated.
<b>RULE 7067-1 REGISTRY FUNDS</b>	This rule was amended to comply with the new national requirements for the investment of registry funds.

**Summary of Rhode Island Local Form Amendments  
Effective December 1, 2016**

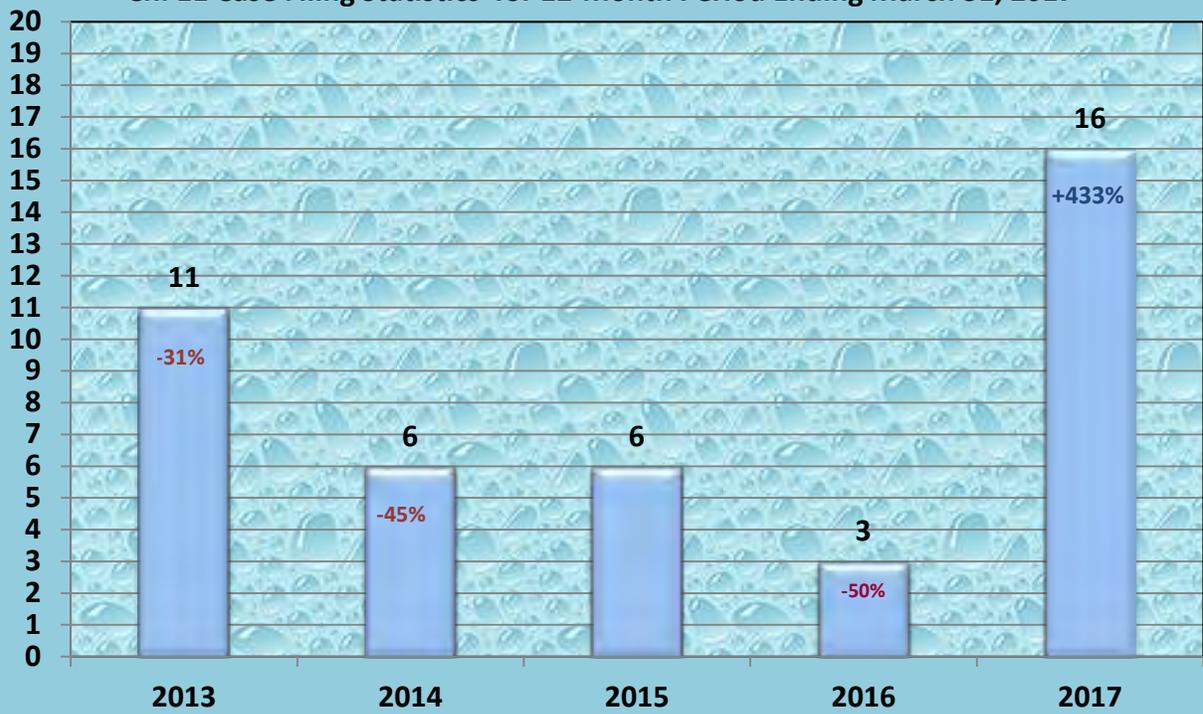
<b>R.I. Local Form 3011-1.1 Petition for Payment of Unclaimed Funds</b>  <b>And</b>  <b>R.I. Local Form 6005-1.1 Notice of Intended Public Sale of Estate Property</b>	Subdivision (D) amended to conform to the December 1, 2016 amendment to Federal Rule 9006(f) which removed service by electronic means, including ECF service, from the types of service allowing three added days to act or respond after being served.
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# Case Filing Statistics for 12 Month Period Ending March 31, 2017

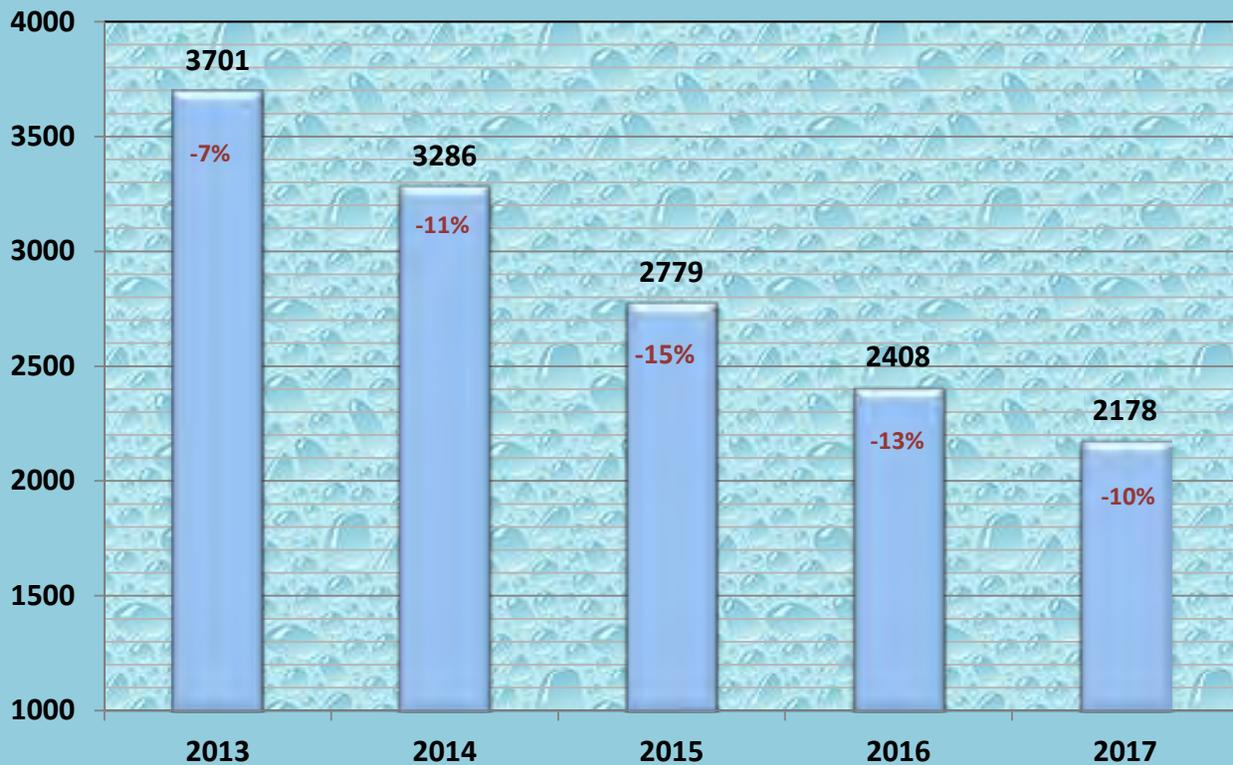
by Jody Venuti, Quality Assurance Specialist



Ch. 11 Case Filing Statistics for 12-Month Period Ending March 31, 2017



Total Case Filing Statistics for 12-Month Period Ending March 31, 2017





## 2017 COURT HOLIDAY CLOSING DATES

Memorial Day - Monday, May 29th  
Independence Day - Tuesday, July 4th  
Labor Day - Monday, September 4th  
Columbus Day - Monday, October 9th  
Veterans Day - Friday, November 10th  
Thanksgiving Day - Thursday, November 23rd  
Christmas Day - Monday, December 25th

## CONTACT ON THE DOCKET 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](mailto: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](http://www.rib.uscourts.gov)  
for local filing information.  
Thank you.

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

