

VBA Bankruptcy Section
Bench-Bar Brown Bag Lunch Meeting
with Colleen A. Brown, U.S. Bankruptcy Judge
Tuesday, September 4, 2007
12:30 pm – 2:00 pm

at the United States Bankruptcy Court, Rutland
Participation may be in person or via the telephone

The topics for this information discussion may include:

1. New Standing Order # 07-09 re rent deposit / pre-petition eviction jmts

This changes the standing order created when BAPCPA first came into effect (S.O. # 05-06) -- and the implementing forms / procedure; The new standing order provides

- if a landlord files a consent, the Clerk will mail the rent deposit to the landlord immediately (*no change*);
- if a landlord files an objection during the 10 day objection period a hearing will be set (*no change*); and
- if the landlord ***does not respond during the 10 day period***, the landlord will be deemed to have waived the objection and the Clerk will mail the check to the landlord upon the expiration of the 10 day period (***this is new***).

NOTE: This does not affect the landlord's other objection period later in the process (regarding the cure amount).

2. Standing Order # 07-10 has been drafted in response to the national policy on access to, and redaction of, transcripts (draft is attached); the recommended sample advisory is as follows:

The judiciary's privacy policy restricts the publication of certain personal data in documents filed with the court. The policy requires limiting Social Security and financial account numbers to the last four digits, using only initials for the names of minor children, and limiting dates of birth to the year. However, if such information is elicited during testimony or other court proceedings, it will become available to the public when the official transcript is filed at the courthouse unless, and until, it is redacted. The better practice is for you to avoid introducing this information into the record in the first place. Please take this into account when questioning witnesses or making other statements in court. If a restricted item is mentioned in court, you may ask to have it stricken from the record or partially redacted to conform to the privacy policy, or the court may do so on its own motion.

3. New dates for fall 2007 BB meetings

- (a) Thursday, October 4 – Burlington
- (b) Thursday November 15 – Rutland
- (c) Tuesday, December 18 – Burlington (*tentative –Dec BB mtg may be part of annual CLE*)

4. Changes to fall 2007 hearing dates:

- (a) Cancelled the following hearing dates, previously scheduled for Rutland:
 - (i) October 16
 - (ii) November 20
 - (iii) December 11

- (b) Added the following hearing dates:
 - (i) October 23 Rutland VC calendar
 - (ii) November 6 Rutland VC calendar
 - (iii) November 13 Burlington calendar
 - (iv) December 4 Rutland VC calendar
 - (v) December 18 Burlington calendar
- 5. ISYS search engine – it is going to be easier to use; metadata being revised – *Kevin Plew*
- 6. Update on Court's COOP - *Kevin Plew*
- 7. Use of Burlington Courtroom and Public Terminals – *Kevin Plew*
- 8. Bankruptcy Statistics (Per Administrative Office press release dated 8/16/07) – *Kathy Ford*

Bankruptcy filings in the federal courts continued a slow upward creep. In the 12-month period ending June 30, 2007, there were 751,056 bankruptcy cases filed. This total is a 49.4% drop when compared to filings for the 12-month period ending June 30, 2006 when cases totaled 1,484,570. But June's 12-month total is greater than the 12-month totals for March 2007 (695,575 cases) and December 2006 (617,660).

Of the total number of bankruptcy filings in the 12-month period ending June 30, 2007, there were 450,332 Ch 7 filings, down 61% from the 1,164,815 Ch7 filings in June 2006.

- Ch 13 filings, the next largest group of filings, totaled 294,693, down 6% from the 313,085 Ch 13 filings reported for the 12-month period ending June 30, 2006.

- Ch 11 filings also fell in this 12-month period, dropping to 5,586 or 10% from the 6,224 Ch11 filings of June 30, 2006.

- Only Ch 12 filings increased. Ch 12 bankruptcy filings totaled 386, up 7% from the 360 Ch 12 bankruptcies filed as of June 30, 2006.

Third quarter filings, the 3-month period ended June 30, 2007, totaled 210,449, up 35% from the 155,833 cases filed in the Judiciary's fiscal year 2006 3rd quarter. So far, filings for the June quarter are the highest of any quarter in fiscal year 2007 (October 1, 2006 - September 30, 2007). First quarter filings totaled 177,599 and second quarter filings totaled 193,641.

More specifics and tables are available at

http://www.uscourts.gov/Press_Releases/bankruptcyfilings081607.html

- 9. CM/ECF tip of the day – refresher on how to file some motions needed post-BAPCPA
 - (a) motion to vacate discharge
 - (b) motions to delay entry of final decree (e.g., to obtain/file a reaffirmation or file form 23).
- 10. Next Bench-Bar meeting scheduled for **Thursday, Oct 4th in Burlington**

Attachments: *Standing Order # 07-09 and Draft Standing Order # 07-10*

***These Bench-Bar Lunches are coordinated by the Bankruptcy Court Chambers and Clerk's Office.
Questions? Call Thomas J. Hart at 802-776-2002***

No fee, no pre-registration required. Soft drinks and bottled water will be provided.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

Standing Order # 07-09

**MODIFICATION OF LOCAL RULES OF
PRACTICE AND PROCEDURE IN
BANKRUPTCY COURT, DISTRICT OF
VERMONT**

**SUPERSEDING STANDING ORDER # 05-06
AND DESCRIBING THE NEW
PROCEDURES REGARDING DEBTORS'
ASSERTION OF AN EXCEPTION TO THE
LIMITATION OF THE AUTOMATIC STAY
UNDER 11 U.S.C. § 362(I) AND CLERK'S
RECEIPT AND MAILING OF DEPOSITS
OF RENT IN CASES FILED ON OR AFTER
OCTOBER 17, 2005**

WHEREAS the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") creates limitations on the automatic stay in the context of actions to recover possession of residential property occupied by a debtor, see 11 U.S.C. § § 362(b)(22) and 362(l), and

WHEREAS the Court finds it is in the best interest of all parties for there to be a uniform procedure for implementing these provisions, regarding debtors' deposits of rent, under § 362(l)(1)(B), the Clerk of Court's transmittal of such payments to landlords of debtors, under § 362(l)(5)(D) and the applicability of the stay under § 362(b)(22):

IT IS HEREBY ORDERED that, with respect to all cases filed on or after October 17, 2005:

1. A debtor who wishes to have the benefit of an automatic stay, after entry of a Judgment of Eviction with regard to residential property in which the debtor resided as of the date of the petition must, in compliance with § 362(l)(1)(A) and § 362(l)(5)(B),
 - (a) file with the petition a certification made under penalty of perjury ("certification #1");
 - (b) file with the petition a copy of the Judgment of Eviction; and
 - (c) deliver to the Clerk of the Court, with the petition, a deposit of rent, in the form of a bank check, attorney trust account check, or money order payable to the order of the lessor.
2. Upon receipt of the bank check, attorney trust account check, or money order payable to the order of the lessor, accompanied by a copy of the Judgment of Eviction from the debtor (or debtor's agent), pursuant to § 362(l)(5)(D) and certification #1, the Clerk of the Court is directed to issue a notice to the lessor
 - (a) informing the lessor that the debtor has filed the requisite copy of the Judgment of Eviction and certification #1, and has delivered a deposit of rent to the Clerk of the Court,
 - (b) enclosing copies of all three documents,

- (c) setting a deadline of 10 days after service for the lessor to either consent to inapplicability of the stay exception under § 362(b)(22) or object to certification #1 and request an order finding that this exception applies; and
- (d) stating that if the lessor files a consent the Clerk will immediately transmit the deposit of rent to the lessor; if the lessor objects the Clerk will immediately set a hearing on the objection, to be held no later than 10 days after the filing of the objection, and if lessor fails to file either a consent or an objection within the 10 day period set by the court, the lessor will be deemed to have waived the opportunity to object, and the Clerk will transmit the deposit of rent to the lessor at the expiration of the 10 day deadline.

3. Upon receipt of the notice the lessor shall either (i) file a consent that includes the address to which the lessor wants the deposit of rent sent and verification of the amount due for the 30 day period; or (ii) file an objection specifically identifying which averments in the debtor's certification the lessor contends to be untrue.
4. Upon the lessor's filing of a consent, or the Court's entry of an Order finding that the debtor is entitled to the stay, the Clerk shall promptly transmit the deposit of rent to the lessor, at the address listed on the lessor's consent or objection.
5. In the event the debtor submits the deposit of rent in proper form but fails to file either the certification [required by paragraph 1(a) above] or a copy of the Judgment of Eviction [required by paragraph 1(b) above] the Clerk is directed to return the deposit of rent to the debtor with a notice informing the debtor that the Clerk will not accept or process the deposit of rent unless and until it is accompanied by all of the required documents.
6. In the event the debtor's bankruptcy case is filed electronically, the certification filed under § 362(l)(1)(A) shall, in addition to the statutorily mandated averments, specify that the deposit of rent will be delivered to the Clerk (either in person or by mail) within 3 days.
7. If the Clerk receives the deposit of rent within said 3-day period, the Clerk is directed to process and transmit the rent deposit pursuant to this Standing Order as if the rent deposit had been received with the petition, certification and copy of Judgment of Eviction.
8. Within 30 days of the filing of the petition, the debtor must file with the Court and serve on the lessor a certification indicating that the debtor has cured, under applicable non-bankruptcy law, the entire monetary default at issue ("certification #2"). The debtor's obligation to file certification #2 is not mitigated or extended by an objection to certification #1 or the pendency of a hearing on certification #1.
9. If the lessor files an objection to certification #2 the Court shall hold a hearing within 10 days of the filing of service of such objection, to determine the veracity of the certification(s).
10. If the debtor fails to file either certification, the Clerk of the Court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under § 362(b)(22).
11. If the debtor indicates on the petition that a Judgment of Eviction has been obtained but fails to either
 - (a) indicate that the debtor would be permitted to cure the entire monetary default which gave rise to the Judgment of Eviction, or
 - (b) deposit with the Clerk any rent that would become due during the 30-day period subsequent to the filing of the bankruptcy petition, the Clerk of the Court shall

immediately serve upon the lessor and the debtor a certified copy of the docket entry indicating the debtor's failure to file the requisite certification and/or failure to deposit the rent, and applicability of the exception to stay under § 362(b)(22).

12. The Clerk shall waive the fee for certified copies of documents when issuing documents required under this Order.

IT IS FURTHER ORDERED that this Standing Order amends the procedure set forth in Standing Order 05-06 only by the addition in section 2(d) above to specify the procedure when the lessor does not respond within the 10 day notice period..

SO ORDERED.

August 17, 2007
Rutland, Vermont



Colleen A. Brown
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**MODIFICATION OF
LOCAL RULES OF PRACTICE AND
PROCEDURE IN BANKRUPTCY COURT,
DISTRICT OF VERMONT**

STANDING ORDER # 07-10

D R A F T

ELECTRONIC TRANSCRIPT POLICY

WHEREAS the Judicial Conference policy on privacy and public access to electronic case files effective December 1, 2003 directs Courts to take steps to ensure that private, personal identifying data is protected, and 11 U.S.C. § 107(c) specifically gives this Court the power to protect an individual with respect to disclosure of certain protected types of information where the “court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual’s property,” and

WHEREAS in March 2007, the Judicial Conference of the United States adopted revised transcript redaction procedures for courts that make transcripts available electronically, and

WHEREAS this Court has begun to accept transcripts for filing in electronic form, and to make transcripts in electronic form available through PACER, and intends to continue to do so;

THE COURT ACCORDINGLY FINDS that in order to comply with the Judicial Conference Policy, this Court must modify its procedure regarding the electronic availability of transcripts.

THEREFORE, IT IS ORDERED access to every electronic transcript filed with the court will initially be restricted to court users and case participants to allow interested parties the opportunity to review the transcript and file a request for redaction, requesting that personal data identifiers be redacted prior to the transcript being made available to the public.

Such personal data identifiers are:

- social security numbers,
- financial account numbers,
- names of minor children,
- dates of birth, and
- home addresses of individuals;

IT IS FURTHER ORDERED that within twenty-one (21) calendar days of the filing of the official transcript on the docket, each party shall inform the court, by filing a Request for Redaction with the Clerk and serving a copy on the court reporter, of the party’s intent to redact personal data identifiers from the electronic transcript of the court proceeding. The Request for Redaction will indicate the location of the personal data identifiers in the transcript by including the page and paragraph or line where the personal data identifiers are located. **PARTIES ARE REMINDED NOT TO INCLUDE IN THEIR PUBLIC FILING THE INFORMATION THEY WANT REDACTED.** The court reporter/transcriber shall partially redact the personal data identifiers from the transcript as follows:

- social security numbers will be limited to the last four digits,
- financial account numbers will be limited to the last four digits,
- names of minor children will be limited to each child’s initials,
- dates of birth will be limited to the year of birth, and
- home addresses of individuals will be limited to the city and state;

IT IS FURTHER ORDERED that if no request for redaction is filed within the allotted time, the court will conclude that the parties to the action have no objection to the inclusion of personal data identifiers in the transcript and the transcript will be made electronically available on the twenty-second calendar day unless the Court, for good cause, e.g., related to the application of the Judicial Conference Policy on Privacy and Public Access to Electronic Case files, finds that a transcript should not be made available electronically.

IT IS FURTHER ORDERED that if timely Request for Redaction is filed by any party to the proceeding following the filing of the official transcript with the Clerk's Office, the official transcript will not to be made electronically available to the general public until the redaction occurs.

IT IS FURTHER ORDERED that during the twenty-one day period, or longer if the Court so orders, any attorney who wishes redactions to the transcripts other than those the personal data identifiers (specified above) must file a motion with the Court, and the transcript shall not be electronically disseminated until the Court has ruled on any such motion.

IT IS FURTHER ORDERED that the cost of any redactions, and responsibility for monitoring the docket to know when the electronic transcript of their hearing has been filed, shall be the sole responsibility of the parties to the hearing which is the subject of the transcript.

IT IS FURTHER ORDERED that it is the responsibility of the parties to avoid introducing personal identifier information into the record, and attorneys are instructed to avoid eliciting information from, or formulating questions to, witnesses during court hearings, that include personal identifier data, and are further directed to be sensitive to the importance of protecting such personal data during the conduct of hearings that are being transcribed.

SO ORDERED.

Rutland, Vermont
August 27, 2007

Colleen A. Brown
United States Bankruptcy Judge