



UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF NEW YORK ECF NEWSLETTER

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UPDATED MEANS TEST INFORMATION

[Click here for details](#) on the Updated Means Test Information for Cases Filed on and After November 1, 2017.

AMENDMENTS ADOPTED BY THE SUPREME COURT – PENDING CONGRESSIONAL REVIEW – EFFECTIVE DECEMBER 1, 2017

The following rules were adopted by the Supreme Court and transmitted to Congress on April 27, 2017:

- Appellate Rule 4;
- Bankruptcy Rules 1001, 1006, 1015, 2002, 3002, 3007, 3012, 3015, 3015.1 (new), 4003, 5009, 7001, and 9009;
- Civil Rule 4; and
- Evidence Rules 803 and 902.

The entire package of materials transmitted to Congress is available [here](#).

These rules will become effective December 1, 2017, unless Congress acts otherwise.

PROPOSED EDNY CHAPTER 13 MODEL PLAN AND LOCAL BANKRUPTCY RULE 3015-1

The Consumer Lawyers Advisory Committee and the Local Bankruptcy Rules Committee of the United States Bankruptcy Court for the Eastern District of New York met with attorneys in Central Islip on September 15, 2017, and Brooklyn on September 27, 2017, to discuss the proposed Chapter 13 Model Plan and the Local Bankruptcy Rule 3015-1.

Click the links below for additional details.

Chapter 13 Model Plan - <http://www.nyeb.uscourts.gov/sites/nyeb/files/Chapter-13-From-plan.pdf>

Local Bankruptcy Rule 3015-1 - <http://www.nyeb.uscourts.gov/sites/nyeb/files/EDNY-Local-Rules-RULE-3015-1.pdf>

The rules and form changes are currently scheduled to take effect December 1, 2017

CHAPTER 11 LAWYER'S ADVISORY COMMITTEE

The minutes of the Chapter 11 Lawyer's Advisory committee meeting held on May 17, 2017 have been approved and are posted on the Court's website at the following location:

<http://www.nyeb.uscourts.gov/sites/nyeb/files/FinalMay2017Minutes.pdf>

The Chapter 11 Lawyers' Advisory Committee for the United States Bankruptcy Court for the Eastern District of New York is constituted for the purpose of providing a forum for communication and feedback between the Board of Judges and the bar regarding Chapter 11 practice and procedure with the goal of better serving the needs of individuals and business entities seeking reorganization and of other parties in interest in Chapter 11 cases in the District.

Members of the Bar may contact the Committee via email at CH11LAC@nyeb.uscourts.gov

PACER SERVICE CENTER (PSC) ENHANCES PASSWORD SECURITY

In July, the PACER Service Center deployed some new changes to the PACER login process. Depending on whether you have an individual PACER account or share an account, you will be required to update your PACER account.

Your upgraded PACER account will have new security features, including a self-service login retrieval and password reset feature. All accounts will be required to have a valid email address, security question and answer, and a date of birth on file.

Based upon the security features implemented, PACER users will no longer be able to share accounts.

To upgrade your current PACER account, go to www.pacer.gov. Click on Manage My Account, login and provide the required information as specified by a *.

The following Electronic Learning Modules below provide additional information on managing a PACER account and verifying / updating user information.

PACER Only Users - https://www.pacer.gov/ecfcbt/cso/CSO_PACER_Only/CSO_PACER-Only.htm

Maintenance Tab - https://www.pacer.gov/ecfcbt/cso/Maintenance_Tab/Maintenance_Tab.htm

Note: NextGen refers to the next generation of CM/ECF, the following link provides a list on NextGen courts. <https://www.pacer.gov/psco/cgi-bin/links.pl>

ACCESSING CM/ECF USBC - EDNY

If your CM/ECF account becomes temporarily disabled, because the username and password were entered too many times incorrectly, the following message will be displayed:

Your account is temporarily disabled because an incorrect password was given 5 times. If you do not know who entered the incorrect passwords, or if you need to have your password changed, please contact the court. Otherwise, please try again in approximately 5 minutes.

Use the link shown below to reset your CM/ECF account credentials.

If you have lost or forgotten your password, [click here.](#)

Authentication	
Login:	<input type="text"/>
Password:	<input type="password"/>
Client code:	<input type="text"/>
<input type="checkbox"/> I understand the	

IMPORTANT NOTICE
numbers, in compli

Enter your CM/ECF login and the Captcha word. You will receive a password reset email to the address you used when you initially registered for an account

Below are a few frequently asked questions (FAQ) we recently received.

Question: What is the URL of the website to file in the Bankruptcy Court, EDNY?

Answer: <https://ecf.nyeb.uscourts.gov/cgi-bin/login.pl>

Question: What is the URL of the District Court, EDNY?

Answer: <https://ecf.nyed.uscourts.gov/cgi-bin/login.pl>

Additional FAQs can be found at the following location: <http://www.nyeb.uscourts.gov/court-info/faq/>

FILING STATISTICS

January – September 2017

Chapter 7	=	6856
Chapter 9	=	0
Chapter 11	=	202
Chapter 12	=	0
Chapter 13	=	4061
Chapter 15	=	0

Total Cases Filed January – September 2017 – 11,527

Total Adversary Proceedings Filed January – September 2017 – 408

REMINDERS

Courtroom Change for Judge Trust

Starting August 21, 2017 the Honorable Alan Trust's calendar will be heard in Courtroom 760 at the United States Bankruptcy Court in Central Islip. Parties filing motions to be heard before Judge Trust are directed to reference Courtroom 760 in all future notices as applicable.

Judge Lord Returns to the Bench

The Honorable Nancy Hershey Lord returned to the bench on October 17, 2017. Scheduled matters will be heard in Courtroom 3577 on the 3rd floor of the United States Bankruptcy Court in Brooklyn.

Loss Mitigation Requests for Judge Scarcella

If the debtor wants to enter into a Loss Mitigation agreement it is not sufficient to make the request in the Chapter 13 Plan. The Loss Mitigation Request must be docketed separately from the Chapter 13 Plan. This is the link to the form: <http://www.nyeb.uscourts.gov/forms/loss-mitigation-request-debtor-041416>

Alternative Dispute Resolution – Mediation

The United States Bankruptcy Court mediation program was established to assist in the resolution of disputes within bankruptcy proceedings. For forms and details click on this link: <http://www.nyeb.uscourts.gov/alternative-dispute-resolution-mediation>. See *USBC, EDNY Local Bankruptcy Rule 9019-1*.

Keeping Your ECF Account Current

Attorneys are responsible for keeping their information current regarding firm affiliation, address, telephone, fax and/or email. This information can be electronically updated by accessing your CM/ECF account under the **Utilities** menu and selecting “Maintain Your ECF Account.” Should you have reasons to believe that your password has been compromised, you must immediately notify the Court in writing.

Notwithstanding the above, if you wish the Clerk’s Office to change information relating to an attorney profile, all requests must be on business letterhead and signed by the person holding the account. This letter can be faxed to 631-712-6209, or emailed as an attachment to the ECF_Helpdesk@nyeb.uscourts.gov, or mailed to the United States Bankruptcy Court, Eastern District of New York, Alfonse M. D’Amato U.S. Courthouse, 290 Federal Plaza, Central Islip, NY 11722.

The above procedures are also applicable to Limited Access users who have limited access passwords. Requests to change information relating to their limited access creditor profile, including deactivating a password, must be on the company’s business letterhead and signed by the employee and supervisor or the supervisor.

ECF TRAINING CLASS

The next Electronic Case Filing training classes for attorneys and their support staff will be held at the:

- **Central Islip Courthouse - Friday, November 17, 2017 from 9:30 a.m. to 12:30 p.m.**
- **Brooklyn Courthouse - Friday, December 15, 2017 from 9:30 a.m. to 12:30 p.m.**

Attendance is no longer required to receive an ECF password to docket. However, first time users of the ECF system are strongly encouraged to attend the training class with their support staff. **It is important that attendees be on time for class.** Those arriving late must go to the Clerk’s Office on the second floor of the Bankruptcy Court in Central Islip and first floor in Brooklyn to speak to the Public Information Clerk who will announce your arrival or escort you to the training room. Participants must register before attending the class. If you register for a class and must cancel, notify the Court as soon as possible.

The classroom training dates are posted on the Court's website at:
<http://www.nyeb.uscourts.gov/ecf-training-class-schedule>

CONTACT INFORMATION

United States Bankruptcy Court
Eastern District of New York
Conrad B. Duberstein United States
Bankruptcy Courthouse
271-C Cadman Plaza East, Suite 1595
Brooklyn, NY 11201-1800
(347) 394-1700
Help Desk: (347) 394-1700 press 6

United States Bankruptcy Court
Eastern District of New York
Alfonse M. D'Amato United States
Courthouse
290 Federal Plaza
Central Islip, NY 11722
(631) 712-6200
Help Desk: (631) 712-6200 press 6

The Voice Case Information System (VCIS) - 866-222-8029
The Court's website address is: <http://www.nyeb.uscourts.gov/>

This newsletter and previous issues are available for online viewing. [Click here](#) to visit the ECF Newsletter Archive.

In order to cut down on the number of error emails sent to filers each year, we would like to hear from you as to how we can best assist in making docket entries consistent with the requirements of this Court. Send me an email at Margaret_Clarke@nyeb.uscourts.gov letting me know how we can help.

Contact Margaret_Clarke@nyeb.uscourts.gov with your suggestions, articles, and topics for the newsletter.

AMERICAN BANKRUPTCY INSTITUTE JOURNAL

The Essential Resource for Today's Busy Insolvency Professional

Straight & Narrow

BY HON. ALAN S. TRUST AND MICHAEL A. PANTZER¹

Does Sending or Being an Appearance Attorney Have an 80 Percent Chance of Success?



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The well-known and sometimes controversial philosopher Woody Allen has observed that “Eighty percent of success is showing up.”² However, this ideology may not apply in the world of bankruptcy law to attorneys who pay others to show up on their behalf or to the show-er uppers — a.k.a. appearance counsel. Many attorneys who handle a high volume of consumer bankruptcy work often find that they have more court hearings than they can cover; this creates a variety of professional and ethical challenges, as the laws of physics³ but not necessarily technology⁴ mean that you cannot be in two places at once. When this occurs, how do lawyers ensure that their clients are properly represented and the attorney’s ethical obligations are fulfilled?

This article will address one solution lawyers use: Sending appearance or *per-diem* attorneys (lawyer for a day (LFAD)) to show up and discharge the legal obligations of the attorney of record (ARC). (We are not addressing a different “solution” that has been seen utilized too many times: The ARC failing to appear and telling the client to just tell the judge what is going on.) However, “showing up” by sending an LFAD does not guarantee an 80 percent chance of success in bankruptcy court, either for the sender or sendee. So let’s talk

about the professional and ethical responsibilities of the LFAD and ARC.

An LFAD is neither an associate nor a partner at the ARC law firm, and has not signed any pleadings under Bankruptcy Rule 9011 (the court’s appearance log is not a pleading). The LFAD is often a solo or small-firm practitioner who contracts with multiple firms to represent the ARC’s clients at the courthouse⁵ and covers multiple so-called “routine” or “standard” appearances on the same day.⁶ For example, a debtor’s ARC may send an LFAD to represent the debtor at the statutorily mandated § 341 meeting of creditors or defend a motion for relief from stay; creditors’ ARCs regularly send LFADs to represent the creditor on motions for relief from stay and oppose confirmations of chapter 13 plans; sometimes, both the debtor and creditor will send LFADs to appear on the same motion.⁷ Once in a while, an ARC will strategically send an LFAD to ask for a continuance because the ARC could not be there (read: was not ready) for trial (note: this is a bad idea).

Neither the Bankruptcy Code nor the Federal Rules of Bankruptcy Procedure expressly govern the practice of using LFADs. However, on the debtor’s side, the Code and Rules apply to all attorneys who appear on a debtor’s behalf at any stage of a case, regardless of whether the fee is passed on to the client. Under § 329(a), any attorney representing a debtor in or in connection with a case is required to file a statement of the compensation

¹ Disclaimer: None of the statements contained in this article constitute official policy of any judge, court, agency, government official or quasi-governmental agency.

² *In re Jacobson*, 402 B.R. 359, 365 (Bankr. W.D. Wash. 2009), as modified (March 10, 2009). Allen is also quoted as having said, “My one regret in life is that I am not someone else,” available at brainyquote.com/quotes/quotes/w/woodyallen100352.html (unless otherwise indicated, all links in this article were last visited on May 25, 2017).

³ Not the ones that apply to the time it takes to cook grits, famously pointed out by Vinny Gambino at the trial of his cousin in *My Cousin Vinny* (20th Century Fox 1992), available at imdb.com/title/tt0104952/quotes (“Well, perhaps the laws of physics cease to exist on your stove.”).

⁴ Many courts allow telephonic appearances and some have implemented video appearances that make it easier for attorneys to cover large geographical areas and be in two different places at almost the same time.

⁵ *In re Bradley*, 495 B.R. 747, 757 fn.1 (Bankr. S.D. Tex. 2013) (citing Geraldine Mund, “Paralegals: The Good, the Bad and the Ugly,” 2 *Am. Bankr. Inst. L. Rev.* 337, 342 (1994)).

⁶ *In re Wright*, 290 B.R. 145, 148 (Bankr. C.D. Cal. 2003) (in approximately two hours, LFAD made total of 12 appearances for five ARCs before three judges).

⁷ *In re Pali Holdings Inc.*, 488 B.R. 841, 848 (Bankr. S.D.N.Y. 2013). Been there done that; hearing ended with a chat basically asking, “If y’all come back, next time would you please know more about the file?”

paid, or agreed to be paid for the services rendered or to be rendered by that attorney, and the source of the compensation. Rule 2016(b) requires that every attorney for a debtor, whether or not the attorney applies for compensation, file and send to the U.S. Trustee the statement required by § 329, including whether the attorney has shared or agreed to share the compensation with any other entity.⁸

Note to an LFAD: Under Rule 2016, disclosure might be required where an attorney who is not part of the ARC firm represents the debtor, even if only at a meeting of creditors or a single court appearance.⁹ Remember, the LFAD represents the debtor — not the debtor’s lawyer who sent the LFAD.¹⁰ (Do you want to think about the scene from *My Cousin Vinny* where Mona Lisa Vito defines “disclosha?”) So LFADs out there might be asking yourself the following question: Have I ever filed a 2016 statement on a one-appearance matter? (P.S.: Do not get too comfortable, estate-paid professionals — you have § 504 to consider.)

In addition to the Bankruptcy Code and Rules governing attorneys’ fees, many states’ Rules of Professional Conduct govern the sharing of fees with attorneys outside of the law firm.¹¹ For example, in New York, under Rule 1.5(g)(2) of the Rules of Professional Conduct, “A lawyer shall not divide a fee for legal services with another lawyer who is not associated in the same law firm unless ... (2) the client agrees to employment of the other lawyer after a full disclosure that a division of fees will be made ... and the client’s agreement is confirmed in writing.” So, in discharging your duty to provide competent representation and complying with the Code and Rules, does an ARC need to notify the client and have their consent to send an LFAD?¹²

In addition, both the LFAD and ARC need to ensure that the client is being competently represented at the appearance. Courts and commentators have repeatedly expressed frustration with LFADs for various reasons: They are not fully informed on the case, lack accountability and, in unfortunate cases, provide inadequate representation.¹³ In addition, LFADs sometimes impede the efficient administration of the case; it is not uncommon for a creditor’s LFAD to appear at a lift-stay hearing only to discover that the debtor is actually not in default on her mortgage or as deeply in default as the motion alleges, or has brought money to court to become current and/or is working on a loan

modification with the creditor.¹⁴ (It is not uncommon to hear, “I was not advised of that. May I have an adjournment?”) This often results in avoidable delays (often longer than the ARC would have wanted) and the consumption of valuable judicial resources, not to mention a debtor having to miss work to come back.

Some courts have taken steps to regulate or limit the use of LFADs.¹⁵ For example, Hon. Jeff Bohm of the U.S. Bankruptcy Court for the Southern District of Texas banned the use of LFADs in any case over which he presides.¹⁶ In *In re Bradley*, Woody Allen was proven terribly wrong; the last drop (or should we say, deluge) that made the vase spill over involved an ARC who, among other things, failed to meet with his clients before filing a notice of conversion from chapter 13 to 7¹⁷ and related Statements of Financial Affairs, directed his assistant to forge the debtors’ signatures on documents filed with the court and repeatedly sent an LFAD to § 341 meetings without the debtors’ prior knowledge or consent: Three strikes and you are out!

On the day of the § 341 meeting, while one of the debtors met with the unprepared LFAD, she discovered that the documents were forged and contained errors. Not surprisingly, the meeting was continued; the same LFAD showed up at the next § 341 meeting (yup, unprepared again) to “represent” the debtors; court hearings ensued.

The judge ultimately found that the ARC violated Bankruptcy Rules 9011(b)(1)-(3) and 5005(a)(2) (strike one); violated numerous guidelines for professional conduct related to his duties to his clients, his personal dignity and professional integrity (strike two); and violated Local District Rule 11.2, which requires a fully informed attorney with authority to bind the client to appear at all court proceedings, as well as Bankruptcy Rule 2016 for failing to disclose to the court the fees paid to the LFAD and failing to disclose approximately \$500 paid by the debtors for conversion to chapter 7 (strike three).¹⁸ (OK, maybe more than three strikes.) The court imposed sanctions against the ARC, his law firm and the firm’s managing partners for his violations.¹⁹

The court determined that the ARC’s conduct was not an outlier and that the use of LFADs in this courtroom had to stop. In addition to these outlined problems related to LFADs, the court stated that an attorney’s failure to ever meet a client face-to-face is “an affront to the very profession, as well as the judicial system as a whole.”²⁰ In addition,

Hon. Alan Trust was appointed to the bench in 2008 in the U.S. Bankruptcy Court for the Eastern District of New York. An adjunct professor at St. John’s University School of Law, he has also been designated by the Second Circuit Court of Appeals to mediate cases in the Southern District of New York. Michael Pantzer began clerking for Judge Trust in August 2016 and is a leader of the Long Island chapter of the Credit Abuse Resistance Education program.

8 *In re Ortiz*, 496 B.R. 144, 150 (Bankr. S.D.N.Y. 2013) (holding appearance counsel who represented debtor at § 341 meeting must file separate Rule 2016(b) statement).

9 *In re Johnson*, 411 B.R. 296, 301 (Bankr. E.D. La. 2008).

10 *Id.*

11 See Colo. St. Rpc. 1.5(d)(2) and (4).

12 N.Y. St. Rpc. Rule 1.1 cmt. 6A (consent to hire outside lawyer ordinarily not required to cover single court call; however, consent is ordinarily required to hire outside lawyer to argue summary-judgment motion or negotiate key points in transaction).

13 *Jacobson*, 402 B.R. at 365 (“[T]he lack of formal association could raise questions about the informally appearing attorney’s authority to speak for, and make judicial admissions on behalf of, the client (the contrary suggestion would not be a promising argument).”).

14 The issue here might not be that the LFAD is unprepared, but that the creditor has internal communication problems.

15 *Wright*, 290 B.R. at 156 (fee applicant must demonstrate that client agreed to terms of contract attorney if firm contemplated use at the time it was employed); *In re Bernhardt*, No. 06-10626 MER, 2012 WL 646150, at *8 (Bankr. D. Colo. Feb. 28, 2012) (clients must have previously consented to such representation); *Johnson*, 411 B.R. at 302 (“[A]ttorney ... must obtain that client’s consent to allow substitute counsel no less than 48 hours before the hearing or creditor’s meeting.”).

16 *Bradley*, 495 B.R. 747.

17 The ARC charged debtors \$524 for this service, but disclosed the firm collected only \$26.

18 *Id.* at 778-90.

19 In support of imposing sanctions, the court reviewed five cases in which the law firm had been subject to sanctions related to its representation of debtors.

20 *Id.* at 805.

the court stated that attorneys who send LFADs to § 341 meetings and hearings in their place, particularly those who are unprepared, “leave a bad and lasting impression on their clients. This practice reflects poorly on the debtor’s attorney, other attorneys, the bankruptcy process, and the judicial system in general.”²¹ Ultimately, Judge Bohm invoked his powers under § 105(a) and Bankruptcy Rule 9029(b)²² to implement a rule in all cases in which he presided that “no attorney shall represent a debtor in a case, whether it is at an actual hearing, a meeting of creditors, or any other proceeding, unless that attorney is enrolled as the attorney-in-charge or practices at the attorney-in-charge’s firm as an associate or a partner.”²³

As judges, we have varying views on the utility and propriety of ARCs using LFADs; for Judge Trust, while he tolerates the practice for uncontested matters and frowns on it for contested hearings, it is troubling when he raises an issue, even in an uncontested matter, and the LFAD looks at him as if he/she “was told there would be no questions.” He also has a colleague who will ask the LFAD if they know anything about the case, and if the answer is “no,” will ask, “Then why do I care about anything you are about to say?”

Judge Bohm’s ruling in *Bradley* is a cautionary tale to all ARCs who send LFADs on their behalf. The legal profession is a profession because lawyers are not interchangeable like ketchup packets; clients, especially those who have suffered crippling financial misfortune, want and deserve the comfort of the lawyer they met with and to whom they explained their dilemmas to hold their hands and guide them through the scary process of court hearings and the § 341 meeting (especially if being examined while staring at an FBI poster that warns the debtor of the dangers of lying and bankruptcy crimes). Clients do not want to show up in court and ask, “Who’s this guy?” See it from the client’s side: Would you want to show up for surgery and have someone you never met tell you as they rolled you into the operating room, “Oh Dr. Arch had another procedure to do so she asked me to step in; what seems to be the problem?”

For the most part, ARCs should not have a problem using LFADs, and LFADs should be fine appearing when they are actually familiar with the matter and follow the applicable Code sections and Bankruptcy Rules, Rules of Professional Conduct and Local Rules — but if you are not prepared to do that, stay home and pop open ketchup packets. Woody Allen’s famous rule about “showing up” may apply to many facets of life and show business, but ARCs and LFADs should consider shoddily handling legal matters to be in the 20 percent he excluded. **abi**

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The American Bankruptcy Institute is a multi-disciplinary, non-partisan organization devoted to bankruptcy issues. ABI has more than 12,000 members, representing all facets of the insolvency field. For more information, visit abi.org.

²¹ *Id.*

²² Judges may regulate practice when there is no controlling law, so long as such regulation is consistent with all other law and rules. See *In re Wideman*, 84 B.R. 97 (Bankr. W.D. Tex. 1988).

²³ *Bradley*, 495 B.R. at 807.