



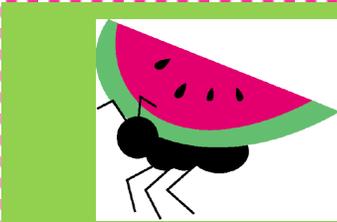
# THE BANKRUPTCY ADVISOR



Volume 11, Issue 2

A Periodic Publication of the U.S. Bankruptcy Court for the Northern District of Florida

June 2013



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## Chapter 13 Mortgage Modification Mediation Now Available in the NDFL

The United States Bankruptcy Court for the Northern District of Florida is pleased to announce the establishment of a mediation program for mortgage modifications in Chapter 13 cases.

If your client is a Chapter 13 debtor who wants to keep their home, cannot afford the current mortgage payment, and can afford to pay up to 31% of their gross income to a modified mortgage, they may qualify to participate in our new mortgage modification mediation program. Requesting mediation will allow you and the lender to discuss whether modifying the mortgage loan is feasible. If successful, it may lower the monthly payment amount and allow the debtor to keep their home.

Mediation is an informal meeting conducted by a mutually agreed upon neutral mediator who will act as a discussion facilitator. The mortgage modification cannot be forced nor is it always possible, but is a way to discuss whether modifying the mortgage on the debtor's home is possible.

For more information on this new process, please see the article on [page 5](#) of this publication.

### We're on a Mission!

The U.S. Bankruptcy Court for the Northern District of Florida now has a formal mission:

***To administer justice fairly while providing excellent assistance to those we serve.***

We take this charge seriously and expect that you will see our continued commitment to the administration of the cases in our court, fairness to all, and excellent customer service daily.

Tips



&amp; Tricks

## BNC Notice of Undeliverable Address

While the language in this notice directs you to file this notice by mailing it to the Court, ECF users may file this document electronically using the “Notice of Change of Address” docket event. **Electronic filing of this document is preferred by the Court.**

From: United States Bankruptcy Court, Northern District of Florida

Re: U.S. Courts, Bankruptcy Noticing Center - Undeliverable Notice

In re: Harold O. Simpson, Case Number 13-10253-KKS

**TO THE DEBTOR:**

## Traci Abrams Appointed Acting Clerk

Traci Abrams, formerly Chief Deputy Clerk of the U.S. Bankruptcy Court for the Northern District of Florida, was appointed Acting Clerk in this district on May 4, 2013. Traci was sworn in on April 18, 2013, by Chief Judge Karen K. Specie. Traci will perform the roles of both Acting Clerk and Chief Deputy Clerk with the assistance of her very capable staff until such time as a new Clerk is selected.

Departing Clerk, William (Bill) Blevins, transferred to the U.S. District Court for the Eastern District of Louisiana in New Orleans where he replaced Clerk Loretta G. Whyte upon her retirement.



## Procedural Change Regarding Service of Documents by the Court

Effective June 1, 2013, the Clerk’s Office discontinued serving the original plan and continued confirmation hearing notices in Chapter 13 cases where the debtor has legal representation. The Court will continue to serve the plans of *pro se* debtors. Counsel should immediately file a certificate/proof of service of the plan if not included in the plan document. The Clerk’s Office will issue electronic reminders of this new process for a short period of time.

In an effort to contain costs due to budget cuts, the Clerk’s Office has developed a list of orders and notices currently served by the Court to be served by the parties in the future. Judge Specie has approved these changes and we will gradually shift noticing responsibilities of these documents to the movant or debtor’s attorney, as applicable. We will provide advanced notice of the date the Clerk’s Office will discontinue service of each item as well as electronic reminders of the requirement to serve the documents for a short period of time after the implementation of each change. If you have any questions, please feel free to contact our office.

## HELP DESK HINTS... Service Guidelines

A new document entitled “[Service Guidelines](#)” has been posted to our website to provide guidance in matters of service. This document contains information about service, to whom and how, service of objections to claims, service on adversely affected parties, where to find party information, electronic and manual service lists available in CM/ECF, obtaining and reading matrices from CM/ECF, and what constitutes “true service.” This document is located on the Filing Requirements page of our website and is accessible through the hyperlink above.



## Certificate of Service: Service by the BNC?

By Melissa McClure, Director of Court Operations

We frequently see language on Certificates of Service indicating that documents filed in CM/ECF are being served by the Bankruptcy Noticing Center (BNC). Please review this excerpt from [Standing Order No. 11 and Ninth Amended Administrative Procedures](#) Implementing Electronic Case Filing for guidance in insuring that your documents are being delivered to the intended recipients.

### STANDING ORDER #11 - Section II B. SERVICE

1. Whenever a pleading or other paper is filed electronically in accordance with these *Procedures*, the System will automatically generate a Notice of Electronic Filing by electronic means at the time of docketing.
2. Participation in the System by receipt of a password provided by the Court shall constitute a request for service and notice by electronic means pursuant to FRBP 9036. Registered participants of the System, by possessing a password from the Court, agree to receive notice and service by electronic means both from the Court and from other System participants, wherever located. Service by other means requires nonparticipation in the System and judicial waiver is required under Paragraph II.A.2.
3. An attorney filing a pleading or other paper electronically will serve the Notice of Electronic Filing by electronic means and such service will be considered the equivalent of service of the pleading or other paper by first class mail, postage prepaid, *if and only if* the recipient of the notice or service is either a registered participant in the System and/or has agreed in writing with the filer to accept such service in lieu of service by first class mail 4. For all remaining parties and non-registered participants, the filing attorney shall serve the pleading or other paper upon all entitled in accordance with applicable rules.
4. The following language is recommended for registered users of the System for certificate of service purposes:

“The following parties were served either by electronic or standard first class mail:”

(and then show the parties to whom service was rendered together with their e-mail or mailing address.)

**IMPORTANT NOTE:** The Bankruptcy Noticing Center (BNC) is the Court's noticing service contractor and does NOT serve documents for anyone except the Court. **Only** registered participants of the ECF system have agreed to receive notice and service by e-mail. Notice and service to non-participants needs to be done via first class mail in accordance with B.4.

When serving documents to all creditors, you may attach a mailing matrix obtained from CM/ECF (Official Mailing Matrix) to your Certificate of Service. This will suffice as the list of names and addresses, relieving you from typing them into the Certificate.

In order to ensure that all parties and/or creditors receive your documents, please follow the instructions in the Administrative Procedures and do not assume the Court/BNC will affect service on your behalf. Lack of proper service can result in a delay in processing, as well as the cancellation or continuance of a hearing.

If you have questions regarding electronic service of documents, please contact our Helpdesk at 888-765-1752 or via email at [CMECF\\_HelpDesk@fnb.uscourts.gov](mailto:CMECF_HelpDesk@fnb.uscourts.gov).

## Mission Possible

"Mission Possible" was selected as our court's 2013 theme, the unveiling of which featured sealed "secret agent" envelopes containing various symbolic icons to help staff stay motivated and ready for action. Our can-do attitude continues to exist amidst current and looming budget shortfalls for all of the federal Judiciary (bankruptcy courts especially) as a result of sequestration and a reduction of fiscal year 2013 funding to the tune of \$350 million.

The Judiciary has taken steps to reduce case processing costs on a national scale through local efforts. For example, bankruptcy courts were asked to examine their noticing practices and identify those that could be eliminated or shifted to the responsible party. Approximately \$25,000 in annual cost reductions were identified by staff in our court alone. These changes will be rolled out over time with one change in particular already in effect where confirmation hearing information is now included in the Notice of Commencement of Chapter 13 Case (aka, the "341 Notice"). See [page 2](#) of this publication for more information on noticing changes. In addition, and to "accommodate furloughs in the offices of the Federal Public Defender and the U.S. Marshals Service, many courts have reduced or eliminated Friday court hearings" (see [Sequestration – Long Term Effects](#) by Lee Ann Bennett, FLMB Clerk of Court). Currently, Florida Northern does not plan to modify its hearing schedule in this manner.

While national media outlets report limited or cancelled furloughs throughout the federal government as a positive sign, the reality is that reductions in force (RIF) are in effect and will most likely be on the rise within the Judiciary as another cost-saving measure. The Honorable Julia S. Gibbons, Chair of the Committee on the Budget of the Judicial Conference of the United States, reported to a House subcommittee in March, 2013, that up to 2,000 employees could be laid off during fiscal year 2013 on top of the 1,800 court staff that have been lost over the last 18 months, representing a 9 percent decline in staff since July 2011. She further stated that "the Judiciary cannot continue to operate at such drastically reduced funding levels without seriously compromising the Constitutional mission of the federal courts...we don't choose our work. Other people choose what comes to us, and we have to meet those demands" (see [Honorable Julia S. Gibbons' March 20, 2013 statement](#)).

In our court, financial realities have resulted in a reduction in force by two valuable staff members before the end of the fiscal year in September. This loss comes on the heels of an RIF during fiscal year 2012 involving three additional employees. These reductions represent a significant knowledge and resource drain on our organization as well as a great hardship for the employees and their families.

In order to mitigate the resulting organizational effects, our ongoing goal is to streamline procedures and gain efficiencies through automation in order to continue to perform mandatory duties without processing delays when at all possible. Non-mandatory services will also be under review and will need to be eliminated when necessary. As always, we will communicate such changes to the public through direct emails, this newsletter, and the Court's website ([www.flnb.uscourts.gov](http://www.flnb.uscourts.gov)).

The Clerk's Office sincerely appreciates the patience and support of those who practice and litigate within the Northern District of Florida. As always, our dedicated staff will continue to serve the public with a smile and a friendly attitude.

## Mortgage Modification Mediation

The new mortgage modification mediation program allows parties to discuss mortgage modification in an informal setting as well as to provide a “fast track” for both the debtors and the lenders. The mediations are for negotiation purposes only and neither the debtors nor the lenders are required to enter into any agreement. The Court will not force any modification and will make no adjudication without the consent of both parties. Common issues to negotiate include a reduced interest rate (either temporary or permanent), moving payment for mortgage arrears to the end of the loan, and, in some instances, reducing the principal. Any or all of these outcomes are possible and will greatly improve the success of a Chapter 13 Plan.

The program is streamlined to reduce costs, save considerable time, and make it easier for the parties to facilitate a loan modification. The Court has emulated the Loan Modification Mediation Program being offered by the Middle District of Florida which has been successfully organizing mediations for a number of years. The program uses experienced mediators who charge a reduced fee of \$385.00 for two hours of their services. Chapter 13 debtors who would like to use this program should file a Motion for Referral to Mortgage Modification Mediation using Local Form [13-38](#). The Bankruptcy Court then enters an [order](#) requiring the parties mediate within 60 days. A hearing on the motion is not required.

Certain pre-requisites are necessary before the debtor(s) can ask for mediation using this “fast track” method:

- The debtor and debtor’s counsel, if any, must determine if a mortgage modification is feasible. Lenders generally require debtors to devote 31% of their gross income to repayment of any modified mortgage, which would include principal + interest + taxes + insurance.
- The debtor must pay \$385.00 to the Chapter 13 Trustee before the mediation session.

Once mediation is ordered, the parties will agree on a mediator from the approved list of mediators provided by the Bankruptcy Court. If a mediator cannot be agreed upon, the Court may choose one for you. The debtor/debtor’s counsel must provide certain financial information concerning the debtor and any co-debtor on the loan. The lender and lender’s counsel must receive this information at least ten days prior to the mediation. Lenders typically ask for prior tax returns, current pay stubs, and information contained in Schedules I and J, all of which the debtor’s counsel should have in their possession. As a precaution, the debtor(s) should take an extra copy of this information to the mediation, just in case.

As an incentive to allow large national lenders to modify home mortgages and to save costs, the lender and their counsel are permitted to participate in the mediation by telephone. Counsel for the lender is allowed \$300.00\* in fees for representing the lender in the mediation, which is payable either through the modified mortgage or through the debtor’s Chapter 13 plan. Each lender must send a mortgage modification specialist with full settlement authority to the mediation. *Please note that while representatives may have full authority to settle, they must follow the guidelines promulgated by the lender, and if the numbers do not fit into those guidelines, a modification is not likely.*

Debtors who wish to enter into mortgage modification mediation but do not meet the requirements stated here may file a *Motion to Enter Into Mortgage Modification Mediation, Non-Standard Requirements* (no local form). This motion may be filed on negative notice.

For more information on this new program, including a list of [Approved Mortgage Modification Mediators](#), [local forms](#), and [Frequently Asked Questions](#), please visit the [Mortgage Modification Mediation](#) page of our website.

*\*Attorney’s fees, excluding costs, in the amount listed herein shall be considered “normal and customary” in “routine cases.” An attorney seeking fees in excess of the amount listed shall file an application in accordance with 11 U.S.C. § 330, this Court’s Local Rules, and orders associated with the Mortgage Modification Mediation Program.*

## ECF Essentials

### Submission Error Notifications — Top 10

During the quality control (QC) check of documents filed in CM/ECF, the Clerk's Office will issue "Submission Error Notifications" ("SENS") when we determine a filing is deficient or incorrect pursuant to the applicable Code, Rules, Local Rules, or local practice. The "top 10" reasons we issue these notifications are:

- Incorrect filing event used
- Document not signed
- Schedules contain new creditors, no amended matrix filed
- Adversary document filed in bankruptcy case
- Certificate of service missing or does not include list of recipients' names and addresses
- PDF issues: illegible, incomplete, attachments omitted
- Improper objection to claim of U.S. government agency
- Improper/inadequate service to U.S. government agency
- Document filed in wrong case
- Negative notice legend omitted or not in compliance with Local Rule

Please note that you must re-file the document to correct the issue(s) noted before your document or pleading will be processed by the Clerk's Office (e.g., set for hearing, forwarded to chambers for review, etc.). Failure to correct the errors or deficiencies noted may result in an Order to Show Cause.

If you have questions about how to correct the problem, please contact the Case Administrator who issued the SEN; her name will be in parenthesis at the end of the docket entry (e.g., "(Gibson, J.)").



### Specific Service Requirements for FDIC-Insured Institutions

Did you know that service to an FDIC-insured depository institution is required to be done by certified mail? Additionally, service must be made upon an officer of the bank. If the institution has filed, *in writing*, a waiver of this entitlement and designated a named officer or service agent to receive service, the institution may be served by regular first class mail. Service may be made by first class mail to the attorney of record for the institution if the attorney has made an appearance in the case. For more information on service requirements, including service on government agencies or other non-governmental entities, please see the [Service Guidelines](#) document available on our website.

### FLNB Board of Advisors

The next Board of Advisors meeting is scheduled to be held July 23, 2013 at 1:30 p.m. Visit the [Board of Advisors](#) page of our website for a list of [current members](#) or to use the [Topic Request Form](#) to submit an idea for consideration by the Board.

### Academies, Conventions, Conferences, Seminars...

Please visit the websites of The Florida Bar and the Business Section of The Florida Bar for information on training and conference opportunities available to attorneys in Florida.

**The Florida Bar**  
[www.floridabar.org](http://www.floridabar.org)

**The Florida Bar Business Section**  
[www.flabizlaw.org](http://www.flabizlaw.org)

## Requirements for Proposed Orders Per Judge Specie's "Do's and Don'ts"

### Basic Format:

- ◆ Proposed orders must be in MS Word (preferred), WordPerfect, or other compatible word processing formats. Proposed orders in PDF format will not be accepted.
- ◆ Documents must be double spaced.
- ◆ Documents must contain the same font type and size, preferably 12 point font, throughout the document and contain only basic formatting (e.g., bold, underline, italics).
- ◆ The initials of the judge to whom the case is assigned must be included in the case number within the header, e.g., 13-12345-KKS.
- ◆ The chapter under which the case is pending, e.g., Chapter 7, must be included within the header, either above or below the case number.
- ◆ The name of the attorney who prepared the proposed order is to be indicated at the end of the document.
- ◆ Documents which contain references to Proofs of Claim or other items on the docket such as responses, amendments, proofs of claim, etc., should contain the name and docket or claim number(s) of those items.
- ◆ When using Latin terms (e.g., *In rem*), you must either underline or italicize the term.
- ◆ Recite what motion and the docket number of that motion is being ruled on within the opening paragraph of the proposed order.
- ◆ **ONLY ONE MOTION PER ORDER.**
- ◆ Use the following date and judge signature block format on all proposed orders, positioning the judge's signature line approximately one inch below the date line:

This would be the last paragraph of text in your proposed order. Double space, indent and bold the "done and ordered" line. Be sure to leave adequate space for the court to add a date then further indent to the signature block as shown here.

**DONE AND ORDERED** on <blank line for court to add date>.

<blank line for judge's signature>  
FULL NAME OF JUDGE ASSIGNED TO CASE  
U.S. Bankruptcy Judge

- ◆ Use plain language such as:
  - DO:** "It is Ordered:"
  - DON'T:** Accordingly; Hereby; Therefore; Adjudged and Decreed; Whereas
  - DON'T:** "The Court is of the opinion..."
  - DO:** "No party filed an objection within the proscribed time period; the Court considers the matter unopposed."
  - DON'T:** "The 14 day stay requirement under Rule 4001(a)(3) is waived."

For more information on Judge Specie's requirements and preferences, please review her PowerPoint presentation (PDF) "[Procedures, hearings and proposed orders](#)" on our website.

**Proposed Orders Requirements (continued):**

**Dispositional Language:**

- ◆ MOTIONS are granted or denied.
- ◆ OBJECTIONS are sustained or overruled
- ◆ APPLICATIONS are approved or disapproved.

**Amended Orders:**

- ◆ Amended Orders must contain a footnote explaining what in the original order is being amended.

**Orders on Motions to Continue:**

- ◆ The title of proposed orders on Motions to Continue must include name/title and docket number of the specific motion/application/objection being continued (e.g., Motion to Incur), *not* the docket number of the Motion to Continue or the Notice of Hearing.

**Orders on Objections to Claims:**

- ◆ If submitting orders sustaining claims after no response to negative notice, do not include rulings on legal issues, statute of limitations, not proper holder, etc.
- ◆ Orders must contain the claim number and the name and address of the claimant and must clearly indicate the amount of the claim to be disallowed (e.g., claim No. 1 filed by ABC Bank in the amount of \$4,321.00, is disallowed). Do not simply state "claim disallowed in its entirety."
- ◆ If the Debtor lists a claim (not as disputed), the Court will not sustain objections to claims filed by the claimant listed on the basis of failure to attach documentation to the claim if the amounts are close. Such objections to claims will receive the Court's scrutiny and in extreme circumstances could lead to sanctions (See, e.g., *In re MacFarland*, 462 B.R. 857 (Bankr. S.D. Fla. 2011)).

**Stay Relief:**

- ◆ Requests for hearing cancellation must be made via CM/ECF. Hearings will proceed as scheduled unless the Court has received a timely proposed order. The deadline to submit a proposed order or settlement is **3:00 p.m., Eastern Time, the day prior to the scheduled hearing.**

Please remember that pursuant to Local Rule 9072-1(E), "**All orders should be submitted within three (3) business days after the date of the hearing or expiration of the response deadline**, unless directed otherwise by the Court or under a separate order-related provision contained within these Rules."



The U.S. Bankruptcy Court for the Northern District of Florida will be closed in observance of the following federal holidays:

**Thursday, July 4 - Independence Day**

**Monday, September 2 - Labor Day**

*CM/ECF will be available for electronic filing.*

**FLNB Resources**

Rev. 06/2013

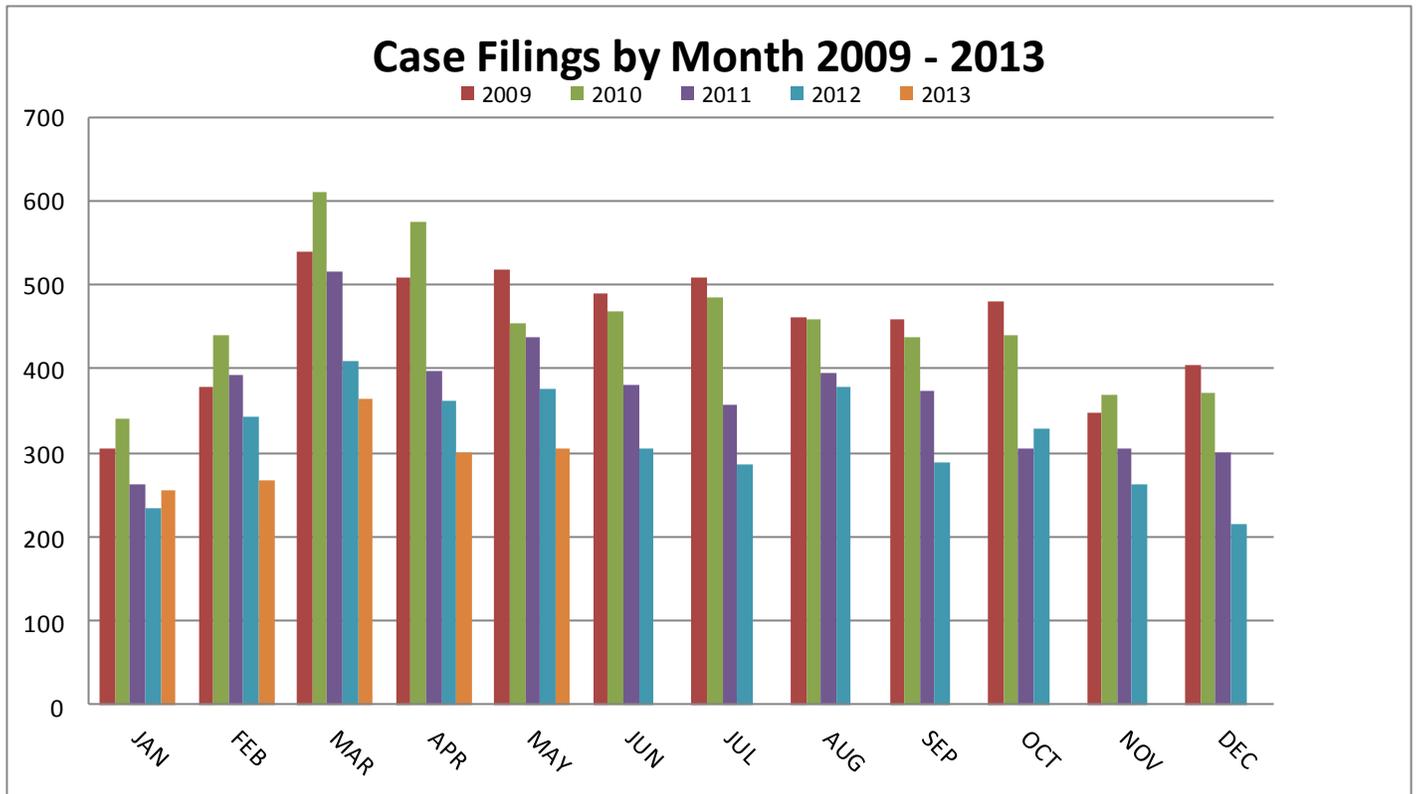
Cases in the Northern District of Florida are randomly assigned to Case Administrators throughout the district shortly after filing. The name of the Case Administrator to whom a particular case is assigned is located at the top of the docket report in CM/ECF.

Ann Laritz (850) 470-3060	Latonia Isom (850) 521-5012	Ne'Shoni Love CM/ECF Login & Password (850) 521-5011 (866) 639-4615	Melanie Lawrence (407) 237-8021 <i>*for cases assigned to Judge Jennemann (FLMB) only</i>
Carolyn Romine (850) 470-3062	Lisa Davis (850) 521-5010	Debra Cook - Help Desk (850) 521-5001 (888) 765-1752	Janet Nah Courtroom Deputy & Calendar Clerk (850) 521-5009
Claire Bikowitz (850) 521-5016	Monica Broussard (850) 470-3061		

*The Clerk's Office phones are answered from 9:00 a.m. until 4:00 p.m., Monday through Friday, except federal holidays. Please feel free to call or email the Case Administrators with your procedural questions. The Clerk's Office is not permitted to answer legal questions nor can they provide guidance as to the content or types of documents that may be required.*

[CMECF\\_HelpDesk@flnb.uscourts.gov](mailto:CMECF_HelpDesk@flnb.uscourts.gov)

Please visit us on the web at [www.flnb.uscourts.gov](http://www.flnb.uscourts.gov)



The monthly filing and closing [statistics](#) for the U.S. Bankruptcy Court for the Northern District of Florida are posted to the Court Resources page of our website at [www.flnb.uscourts.gov](http://www.flnb.uscourts.gov). Statistical information will be available by the 15th of each month.