

## **RULE 75 RE BANKRUPTCY**

The Circuit Court recognizes the automatic stay of certain actions against debtors pursuant to 11 USC 362.

The Court also recognizes that the notice or suggestion of bankruptcy filed in Circuit Court often fails to provide proof that the state court case in question is listed as a debt in the bankruptcy, the identity and address of the bankruptcy trustee, and/or any instructions regarding the disposition of monies of the debtor held in the Registry of the Circuit Court or by the Sheriff.

The Circuit Court is of the opinion, within the strictures of the bankruptcy code, that it is unreasonable for the Circuit Clerk or the Sheriff to bear the burden of determining the effect that a bankruptcy might have on a case in Circuit Court.

THEREFORE, the procedure regarding Circuit Court cases in which a notice or suggestion of bankruptcy has been filed shall be as follows:

### **(1) CASES PENDING PRE-JUDGMENT**

(A) A party shall file suggestion of bankruptcy whenever a party believes that the bankruptcy or automatic stay provision of bankruptcy code has an effect on a state court case filed in this circuit. The suggestion of bankruptcy shall include the name of court in which the bankruptcy was filed and the bankruptcy case number. The party shall file when known the identity and address of the bankruptcy trustee and instructions on the disposition of any monies of the debtor held by the court. A copy of the suggestions of bankruptcy shall be served on each party to the law suit in accordance with Rule 43.01.

(B) Upon the filing of a notice or suggestion of bankruptcy, all action against the debtor shall be stayed for 30 days unless otherwise ordered by the court. The plaintiff shall file proof that the lawsuit in question is not subject to bankruptcy or that the plaintiff

has sought relief from the automatic stay within 30 days of the filing of the suggestion of bankruptcy. Failure to provide proof as stated in the sentence above or to obtain relief from the automatic stay within a time set by the court shall result in a dismissal without prejudice of the claim against the defendant who filed bankruptcy.

## (2) POST-JUDGMENT COLLECTION ACTIONS

(A) A party shall file suggestion of bankruptcy whenever a party believes that the bankruptcy or automatic stay provision of bankruptcy code has an effect on a state court case filed in this circuit. The suggestion of bankruptcy shall include the name of court in which the bankruptcy was filed and the bankruptcy case number, along with the identity and address of the bankruptcy trustee. Upon receipt of the identity and address of the bankruptcy trustee, the Circuit Clerk and/or Sheriff shall transfer any proceeds of the debtor to that bankruptcy trustee. A copy of the suggestion of bankruptcy shall be served on each party to the law suit in accordance with Rule 43.01.

(B) Upon the filing of a notice or suggestion of bankruptcy which does not contain the information listed in (A) above, all monies of the debtor held in the Registry of the Circuit Court or by the Sheriff, or received by the Circuit Clerk or the Sheriff from a garnishee, shall be held for thirty (30) days. If, within those thirty (30) days, the judgment creditor provides the Circuit Court with proof that the debt in question is not subject to bankruptcy, or that the judgment creditor has obtained an Order for Relief from Automatic Stay, any monies of the debtor held in the Registry of the Circuit Court or by the Sheriff shall be paid out (to the judgment creditor) pursuant to Rule 90. If, at the conclusion of those thirty (30) days, judgment creditor has not provided the Circuit Court with proof that the lawsuit in question is not subject to bankruptcy, or that the judgment creditor has obtained an Order for Relief from Automatic Stay, all monies of the debtor held in the Registry of the Circuit Court or the Sheriff, or received by the Circuit Clerk or the Sheriff, shall be held as unclaimed funds unless further order of the court otherwise directs.