

Rules 3001(c) And 3002.1 ★ A Year In Review ★

The purpose of this article is to summarize the various decisions involving the 2011 changes to Rule 3001(c) and Rule 3002.1 of the Federal Rules of Bankruptcy Procedure. Although the rules have been in effect for less than a year, bankruptcy courts have managed to give practitioners valuable insight into their interpretations of the recently enacted rules.

***In re Reynolds*, 2012 WL 3133489 (Bankr. D. Colo.) – Failure to file supporting documents is not an independent basis for disallowing a claim.**

The debtors in *Reynolds* sought to have the proof of claim filed by FIA Card Services (FIA) disallowed due to the claimant's failure to attach supporting documentation to its proof of claim pursuant to Rule 3001(c). FIA was the assignee of a debt originally owned by Bank of America, and the debtor objected to the claim based on the insufficiency of the transfer documents. The debtor did not oppose the claim on substantive

grounds; the only objection was to the form of the claim. The court allowed the claim, and the debtor moved for reconsideration. The *Reynolds* court denied the debtor's motion for reconsideration, and FIA's proof of claim remained allowed.

Prior to the amendment to Rule 3001(c), courts in the Tenth Circuit were bound by the opinion in *Caplan v. B-Line, LLC (In re Kirkland)*, 572 F.3d 838 (10th Cir.2009), which held that claims could be disallowed if supporting documents were not filed with the claim. However, the *Reynolds* court reasoned that FIA's claim should be allowed since the December 2011 amendments provided remedies for non-compliance. *Reynolds* at *4. Specifically, proofs of claim that are not properly documented are no longer presumed to be valid. R. 3001(f). In addition, creditors may be barred from presenting evidence of the claim's validity if the claim is ever called into question. R. 3001(c)(2)(D)(i). Lastly, Rule

3001(c)(2)(D)(ii) gives courts the authority to award attorney's fees, reasonable expenses, and any other appropriate relief. Since Rule 3001(c) contains enforcement provisions for non-compliance, disallowing the claim is no longer a necessary recourse. *Reynolds* at *3. As a result, the court declined to impose an additional penalty that is inconsistent with remedy provided for in the Rule.

***In re Carr*, 468 B.R. 806 (Bankr. E.D. Va. 2012) – Attorney's fees disallowed for filing and preparing a Rule 3002.1 response.**

In *Carr*, the creditor, American Home Mortgage Servicing (AHMS), charged the debtor a post-petition fee of \$150.00 for preparing the required response to the chapter 13 trustee's Notice of Final Cure Payment. In its Response, AMHS agreed that the debtor has cured her mortgage arrears and paid all of her post-petition mortgage payments but included a \$150.00 attorney's fee for preparing the response. The chapter

13 trustee objected to the fee, and the *Carr* court sustained the trustee's objection.

The court gave several convincing reasons for disallowing the fee. For example, an attorney's legal expertise is not needed to prepare the response. The response just indicates the status of a debtor's loan payments, which is a simple task. Moreover, the document is not a pleading, an attorney's signature is not required, and the response is not filed on the court's docket. Moreover, the information needed to verify the accuracy of the trustee's notice can be easily ascertained from the lender's records. *Id.* at 808. Lastly, Rule 3002.1 does not state that creditors can charge debtors for the attorney's fees they incur for filing the required response. Therefore, the trustee's objection to the post-petition fee was sustained. *Id.* at 809. Similarly, in *In re Adams*,

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2012 WL 1570054 (Bankr. E.D.N.C.), a North Carolina bankruptcy court disallowed a \$50.00 attorney fee for preparing a notice of mortgage payment change on behalf of Everbank.

In re Garduno, 2012 WL 2402789 (Bankr. S.D. Fla.)-The requirements of Rule 3002.1 apply only if debtor’s plan proposes to cure and maintain the mortgage payments.

In re Garduno involved a mortgage company, Bank of America (BOA), that was not provided for in the debtors’ plan. Specifically, the plan stated that BOA’s secured claim would be paid nothing, so clearly BOA’s loan was not being cured and maintained pursuant to §1322(b)(5) of the Code. As a result, Rule 3002.1 did not apply.

Nonetheless, BOA filed a Notice of Mortgage Payment Change, which caused the debtors to file an objection to the payment change notice. In the objection, the debtors asked that the notice be stricken and that the debtors be awarded their attorney’s fees. The court declined to sustain the objection and did not award any attorney fees. *Id.* at *1-2.

The court reasoned that since Rule 3002.1 did not apply, BOA was not required to file a notice of payment change. *Id.* at *1. Consequently, the debtors had no obligation to respond to the notice or file an objection. As a result, the debtors’ objection was overruled. In addition, since the court found that BOA had acted in good faith when filing the notice, the court did not award fees to the debtors. *Id.* at *2.

In re Kraska, 2012 WL 1267993 (Bankr. N.D. Ohio)-Although the confirmed plan called for the surrender of the debtor’s residence, the requirements of Rule 3002.1 still applied to the mortgage lender.

In *Kraska*, the bankruptcy court declined to waive the requirements of Rule 3002.1. The debtor’s confirmed plan stated that she would be surrendering her home to Aurora Bank (Aurora), her mortgage lender. Aurora later filed a motion for relief of the automatic stay, and in the motion, Aurora asked for a waiver of the requirements of Rule 3002.1. The court did not grant Aurora’s request and found that Rule 3002.1 still applied since Aurora’s loan was secured by the debtor’s home. *Id.* at *2. In court’s opinion, that fact that the home was being surrendered was not an exception to the rule. *Id.* at *3. The court surmised that Aurora may seek payment on a deficiency claim, which will likely include post-petition fees and costs. *Id.* at *2. If Rule 3002.1 were found to be inapplicable, these charges could be included in the claim without being scrutinized for reasonableness. In addition, changes in the post-petition mortgage payments or escrow account may also have an effect on the amount of the lender’s deficiency claim. Therefore, since Aurora has the opportunity to collect on its unsecured deficiency claim, the debtor and the trustee are entitled to receive notice of the charges that could affect the total amount of the debt. As a result, the court was not willing to grant a “blanket waiver” of the rule’s requirements. *Id.* at *3.

In re Sheppard, 2012 WL 1344112 (Bankr. E.D.Va.)-A creditor’s notice of post-petition fees, expenses or charges should not be filed if the court has ruled on the expenses previously.

In *Sheppard*, SunTrust, the debtor’s mortgage company, settled its motion for relief of the automatic stay with a consent order that required the debtors to cure their post-petition mortgage default by making periodic payments to the lender. In addition to the missed mortgage payments, the default



THE MARSHALL CHRONICLES	
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✓ type-written and	
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We also ask that anyone who attends a seminar please be prepared to furnish the committee with a detailed article on its subject.	
You may also view this edition of THE MARSHALL CHRONICLES , as well as all the previously published issues, all in full color, on the Chapter 13 Trustee website at http://www.chicago13.com/ .	

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Trustee Matters – Farewell To CaseNET

For the past eleven years, we have used CaseNET to administer our bankruptcy cases. On October 1, 2012, we will process our last receipt in CaseNET and then convert all of the CaseNET data to TNG. After testing and reconciliations are completed, we will start to use BSS-TNG as our case administration software. The trustee must automate the Chapter 13 financial reporting, accounting, case administration and reporting systems. Each Standing Trustee is allowed to choose the case administration software that best meets the office needs. According to the Chapter 13 Handbook, the United States Trustee does not endorse or recommend any particular software or server provider. CaseNET met the requirements in the handbook and allowed me to administer cases very well. I am sure the staff will miss the user-friendly jobs in CaseNET and the “open table” searches. I will allow the staff and our clients one last time to remember and bid CaseNET goodbye. I am reprinting the article from March 2002, which I will rename CaseNET’s Obituary. It tells the background and history of CaseNET. CaseNET, I thank you for all of your bells and whistles, but I also bid you farewell.



Marilyn O. Marshall, Trustee

CaseNET’s Obituary

CaseNET: Different Does Mean Better!

(REPRINTED FROM THE MARCH, 2002, VOLUME I, NUMBER 3 ISSUE OF THE MARSHALL CHRONICLES)

CaseNET is the program we use to administer Chapter 13 bankruptcy. Our office has come a long way since January of 1998 when we converted from the old Wang computer to the client/server technology of today’s CaseNET. Our primary focus of the database is to always have accurate financial data. Even more than that, the Information Systems team is committed to giving the users the best application to help them do their job in the easiest and most efficient manner. Here’s what we’ve done recently and expect to do in the future.

CaseNET runs on an application called 4TH Dimension. Each user has an application called 4D Client on their computer while the server machine in the computer room runs an application called 4D Server. 4TH Dimension is created and supported by a company called 4D. The first week of February our office upgraded our 4D server and copies of 4D client to version 6.7 from version 6.0. This upgrade was critical because the company 4D would only continue to support its customers that use the latest version.

Cliff, the Programmer/Analyst from the Information Systems team worked tirelessly to guarantee that CaseNET would successfully run on the new version of 4TH Dimension. With everything in place, we conducted office-wide testing the week before the upgrade and it all came together. In addition, more speed increases have been experienced since the IS team dedicated a Saturday later in February to installing more memory on each user’s Macintosh. With these efforts, we have noticed an increase in CaseNET’s performance since the upgrade, especially with the use of the Print Letter module.

The current CaseNET release includes a new feature in the Print Letter Module that allows “batch processing” of form letters by importing a list of case numbers. The two jobs that will create a list of case numbers when they are run are:

Court Call: Export Items and **§341 Meeting Check-In Sheet**.

We are also changing some CaseNET jobs so that different users can run the same job simultaneously. Motions to Dis-

miss and Court Call Export are two of the jobs to be changed.

Did you know that this office is the only trusteeship in the country to use this software? Other trusteeships use software that is created and maintained by a large software vendor. The fact that we are the only CaseNET office has its advantages and disadvantages. One advantage is that we don’t have to wait on hold to talk to a customer service representative in Memphis when we have a question about the software. We can just walk down the hall. A disadvantage is that we don’t have standard trustee and financial reports that all the other trusteeships have. That means that the auditors who come annually to our office to check our books and management structure aren’t familiar with our system. So to them, different doesn’t necessarily mean better.



Likewise, some also feel our uniqueness in software limits the beneficial relations other trusteeships have experienced with their providers. True, we may be alone in the fact that we are the only trusteeship to use CaseNET, but our office is not alone in our development efforts with CaseNET.

We too have a maintenance agreement with 4D that allows us to purchase upgrades and receive software support. This is a very important relationship that we maintain. In fact, Cliff is in contact with other software developers who design applications in 4TH Dimension as well.

And so, our network of support is large and just as beneficial as the next.

The power of CaseNET lies in its structure. Since the structure of the database is relational, you can find almost any information you are looking for. For example, Rosalind in the Claims Department came into my office just yesterday, worried that CaseNET had incorrectly allocated money to a claim in the “Non-scheduled secured claims” plan group.

We determined that an error had been made in loading a duplicate claim and that CaseNET had done the allocation cor-

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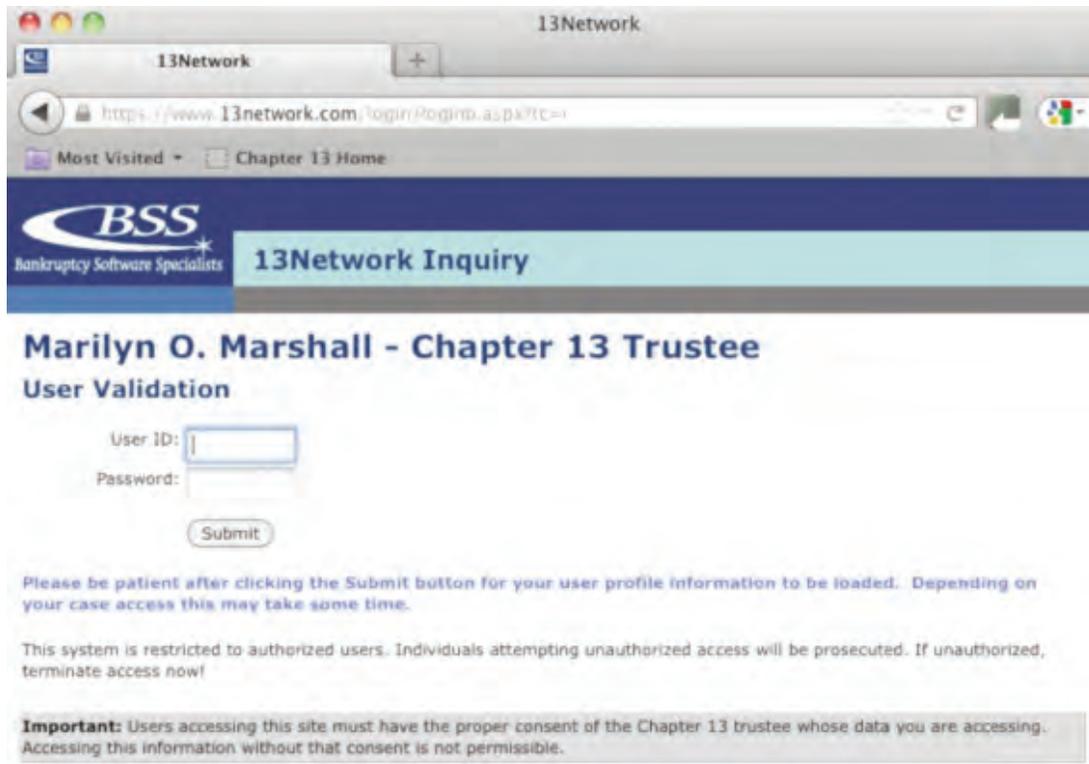


ANNOUNCEMENT:

**DURING THE PERIOD OF OCT 1, 2012 – OCT 8, 2012
INFORMATION IN CASENET WILL NOT BE UPDATED.**

**EFFECTIVE OCTOBER 8, 2012, PLEASE USE
TNG TO ACCESS CASE INFORMATION.**

**CHOOSE QUERY OUR CHAPTER 13 DATABASE AT
[HTTP://WWW.CHI13.COM](http://www.chi13.com). IT WILL TAKE YOU TO THIS SCREEN:**



**YOUR USER NAME AND PASSWORD REMAINS THE SAME.
IF IT DOES NOT WORK, CONTACT BSS_TNG_LIVE@CHI13.COM.**

Financial Creditor Returned Checks

A key component of the trustee's administration of bankruptcy cases is paying creditors. The trustee disburses to creditors once a month to pay on the claims filed in the cases. For a case to move forward, creditors must cash their checks.

Creditor disbursement returns are trustee issued checks that were returned as undeliverable by the post office due to a bad address, creditors returned the checks because they cannot identify the debtor and stale dated checks that creditors forget to cash.

To reduce the number of returned checks, the creditor's payment address and account number must be correct the first time before the claims are loaded for payment. The correct creditor must be indicated on the schedules for secured creditors since they don't always file a claim and the trustee generates a claim based on the information provided by debtors and their attorneys.

It is also vital that creditors file their change of address and claim transfers at the bankruptcy court to ensure the trustee receives the information in a timely manner to keep disbursements running smoothly. Claims are put on hold until all issues are resolved and creditors begin cashing their checks again, which delays the overall administration and prolongs the closing of the bankruptcy cases.

Maude Tetteh, Closing/Audit Specialist

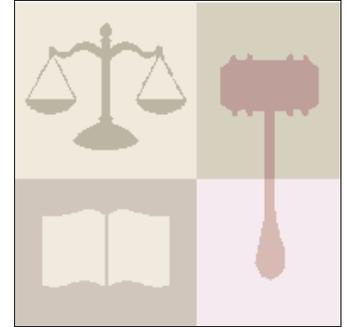


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included attorney's fees, costs, and late charges. SunTrust subsequently filed a notice of post-petition attorney fees and filing fees for the resolved motion for relief. As a result of the chapter 13 trustee's Motion to Determine Fees, Expenses or Charges, the bankruptcy court found that the lender's notice was not necessary since the fees and costs were approved in the consent order. The supplement to official form B10 states that post-petition charges must be itemized unless they were "ruled on by the bankruptcy court." *Id.* at *3.

Although this language is not contained in Rule 3002.1, filing a notice that discloses costs that already have been allowed is confusing and repetitive. *Id.* The *Sheppard* court also clarified that the standing trustee is not authorized to pay the charges reported in the notice. Unless the plan is amended, or some other mechanism is employed, post-petition fees should not be paid by the trustee. The trustee should not construe the notice as proof of claim that should be paid. *Id.* at *4. *Keisha Hooks, Staff Attorney*



October's Notable Events

National Denim Day on October 5th.

Happy Birthday to **Mark Caffarini** on October 8th!

TNG Go Live Day on October 8th.

Columbus Day on October 8th (the office will be open).

Leif Erikson Day on October 9th.

Happy Birthday to **Dave Latz** on October 13th!

Get Smart About Credit Day on October 18th.

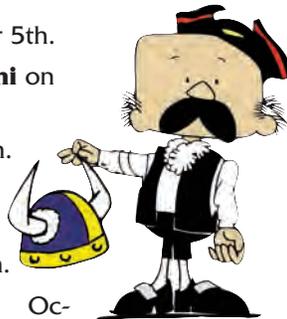
Sweetest Day on October 20th.

Happy 7th Anniversary to **Monica Frausto** on October 24th!

Happy Birthday to **Stephanie Lillie** on October 25th!

Navy Day on October 27th.

Halloween on October 31st.



October Is National Breast Cancer Awareness Month

Nearly one in every eight women in the U.S. will be diagnosed with breast cancer over the course of their lifetime, but when detected early, the disease has a high recovery rate. That is why promoting awareness to women through early detection is essential in the fight against breast cancer. While researchers work tirelessly to find new ways to fight this disease, a cure has not been found. Early detection is the best protection that women have against breast cancer.

Although October is designated as National Breast Cancer Awareness Month, it is dedicated to raising awareness and educating individuals about breast cancer throughout the year. October is a celebration month for many of us. I am proud to say I'm celebrating my first year of being a Survivor. You can help save lives by making donations. Log on to any Breast Cancer Awareness site and view the many ways you can make a difference.

Cheryl Jones, Case Administrator



Case Administration
The Social Security Card



As Client Service Specialist, part of my job is to check debtors in for their \$341 meeting when they walk into the office. I am required to ask to see their drivers license or state ID, their Social Security Card, and any current proof of income they have to make a copy of it for the meeting proceedings. The drivers license or state ID is usually the first thing debtors take out of their wallet. The proof of income is not much of a problem either. Then they try to find where they put their Social Security card. Most people do not carry their card around with them, some lost their card years ago, and others know they have it somewhere but cannot pinpoint its exact location. This got me curious about how the Social Security card and number came to be and what it means to have one.

The Social Security Administration (SSA) has issued over 450 million original Social Security numbers as of December 2008. The Social Security number (SSN) was created in 1936 to track workers' earnings and benefit levels, and is now "the most commonly used numbering system in the United States," according to the SSA's website. This nine-digit number has become the main way of identifying an individual.

So what do the nine digits mean? In 1935 and 1936, The Social Security Board was presented with different options for what the numbers could stand for. After going back and forth with different combinations, on June 2, 1936, the Board approved of the variation that we know today. The first three digits are the area number, which is the geographical region in which you live. The second two digits are the group number, assigned in groups of 10,000 to post offices and allocated to each U.S. state. The last four digits are the serial number that has been assigned to each group, from 0001-9999.

Back in 1935, the SSN was mainly used for earnings tracking and benefits for employees. Today, the SSN is used for anything from getting a loan to applying for a job to registering to vote. The Social Security card has changed a lot as well, mostly to protect against fraud. The SSN is not fraud resistant, however, and must be protected. Because of this, legislation has gone out to prevent it from being printed on certain documents in federal agencies and schools. Despite the threat of identity theft, the use of the SSN as an identifier will not disappear entirely. It will continue to be present so it can evolve even more with whatever the future holds for it.

Stephanie Lillie, Client Services Representative

Reference: Puckett, Carolyn. (2009) Social Security Bulletin. The Story of the Social Security Number. 69 (2). p. 1-26

Information Services
Office Mail... Why The Bubble Was POPped?



Several years ago, when electronic mail first became a standard of communication for the world, many of us had only one computer (usually a desktop at home), and getting email on your mobile phone was something right out of Star Trek. The type of service to accommodate the delivery of email back then was based on set of standards called POP3.

The POP3 service "assumed" that you would be reading your email on one computer, and therefore delivered your messages to that one place and removed them from your email provider's mail server. But what happened if you needed to check your email from another device? In general, you would not have been able to do so.

The office's old mail server used the POP3 standard to deliver email to your mailboxes. In the event you ever needed to log into another computer to work, you would not have been able to access your email because it was stored on your primary workstation.

Enter IMAP. Our IMAP server uses a more current standard for mail delivery. Your messages are kept on the mail server, and this provides the flexibility to access your email from different devices. The new server also allows us to filter junk mail more efficiently, and to backup your email more quickly because all of your mailboxes are stored in one location.

Kenny Maxie, I.T. Specialist

CaseNET's Obituary



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rectly. To find out if there were any other claims on the system that might have incorrect allocations, we did a quick search. I first found all the confirmed cases. Then, I found the plan groups for those cases and searched within them for plan groups with labels containing "Non-scheduled" or "Debtor Responsible". Next, I found the claims that belonged to those plan groups and searched within that set to see if any had allocation dollars in them. There weren't any and Rosalind was amazed at how quickly I could conduct these searches to answer her question.

This example demonstrates that individuals can find information themselves without waiting for a programmer to write a program to look for it for them. The only burden is that one must do it themselves! There are some searches and reports that do need to be as simple to run as pressing a button like reporting to the U.S. Trustee and other management. Others searches and reports are limited only by your imagination and the problem you are trying to solve at the moment.

Sandra Pillar, I.T. Analyst

Taming The Debt Beast

Americans are carrying a larger personal debt load than ever before and savings rates are at an all time low. The percentage of disposable income used to make debt payments is at record high levels and the number of bankruptcies and foreclosures are at record levels as well.



Part of the problem is our spending habits. Lenders have also done their part by offering easy loans, often to people with poor credit.

To begin tackling your debt, you need to take some basic steps first. Most people only pay attention to the amount of their loans and what the monthly payments are. To fully understand your debt situation, you need to be aware of all the details: balances due, interest rates, whether that interest is deductible, whether your rates can change, and whether there are any prepayment penalties for paying off your loans early.

Once you know the details, you should prioritize your debt. All non-deductible loans should be paid off first, leaving loans such as your mortgage, home-equity, and some student loans for later. These non-deductible loans should be listed from highest to lowest interest rates, or you may choose to pay off the smallest balances first, if you want to wipe out several small bills quickly. Either way, you should pay the minimum on all your other debts, and pay as much money as you can to the first bill on your list. Eventually, this debt will be paid off. You can then tackle the next bill on your list, sending that creditor the amount of money you sent each month to the previous bill along with the amount you were paying for your monthly minimum payment. Eventually, you will be paying a larger and larger amount to each subsequent bill, erasing your debt more quickly than trying to pay off several creditors at once.

Of course, this only will work if you stop adding to your debt. Continuing to use credit cards while trying to pay off your debt only compounds the problem. If you find that you are using your credit cards for emergencies, plan on adding a set amount each month to an emergency savings plan. You will then have the means to cover your emergencies without having to pull out those credit cards. By making a plan and remaining committed to it, you will have a chance to pull ahead and begin saving for your future.

October 8th Mark Your Calendars!

Spend your Columbus Day, with me, Keisha Hooks, at the American Bankruptcy Institute's Fifth Annual Chicago Consumer Bankruptcy Conference. This year, the conference will take place at The University of Chicago's Booth School of Business, Gleacher Center, located at 450 North Cityfront Plaza.



I am so excited about this program and our outstanding speakers. In my opinion, this seminar is one that should not be missed. During the seminar, attendees will hear panelists discuss topics including life with the new Federal Rules of Bankruptcy Procedure and issues related to bankruptcy, student loans and the economy.

Attendees also will participate in a breakout session where facilitators will address the problems that arise when clients misbehave. Moreover, the ABI has recruited the Honorable Eugene R. Wedoff to moderate a panel consisting of the Honorable Janet S. Baer, the Honorable Donald R. Cassling, and the Honorable Timothy A. Barnes. If that's not enough- the conference qualifies for CLE general and ethics credit. Now that I've convinced you to join us, make sure to register TODAY at abiworld.org. I hope to see you there!

Keisha Hooks, Speaker and ABI Conference Co-Chairwoman

Safety Tip

To evaluate how secure your home really is, pretend that you have locked yourself out of your home. How would you get in if you had to? Walk around your home and look for



entry points that do not present too much difficulty. These are the areas that should be given more security from burglars. Make a list of windows and doors that need additional security measures and make these a priority.

Trivia Quiz Answers: Cookies



1. The Oreo cookie.
2. The Toll House choco-late chip cookie.
3. Girl Scout cookies.
4. A koala.
5. Keebler.
6. Lebkuchen.
7. Anise.
8. False. It was invented in San Francisco in the 20th century.
9. Biscuits.
10. Thin Mints.

Did You Know: Ham

Go Hog Wild! October is Eat Country Ham Month.



- h** Country Ham is a dry-cured ham, rubbed with salt, sugar and nitrate, and it is usually smoked.
- h** The first canned ham was sold in 1926 by the Hormel Company of Austin, MN.
- h** The most expensive ham in the world is *Jamon Iberico de Bellota*. It is made from free-range Iberian pigs that eat acorns in the cork groves on the border of Spain and Portugal. It is cured for 36 months and costs around \$100 a pound.

- h** Pigs that become *Prosciutto di Parma* are fed whey drained off from making Parmigiano-Reggiano cheese. Both the ham and the cheese are made in Parma, in the Emilia-Romagna region of Italy.
- h** Black Forest Ham is the most popular and largest-selling smoked ham in Europe. Traditionally manufactured in the Black Forest, it is smoked only over fir branches.
- h** SPAM is short for "Spiced Ham." The acronym was supposedly changed in 2000 to Specially Processed Assorted Meat, but Hormel says the official acronym is still Shoulder Pork And ham.
- h** Over five billion cans of SPAM have been sold. More SPAM is eaten in Hawaii than in any other U.S. state.




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The Marshall Chronicles is now available in full color,
 both in print and on-line at www.chicago13.com

Trivia Quiz: Cookies

October is National Cookie Month. Test how much you know about these sweet treats with this cookie trivia quiz. *(The answers are on page 7.)*



1. Which cookie brand has been the most popular in America since its introduction in 1912?
2. What cookie was invented in 1937 by Ruth Graves Wakefield?
3. During the first quarter of the year, which cookie brand is the number one seller in the U.S.?

4. Barnum's Animal Crackers introduced a new animal in 2002. What animal was it?
5. Which U.S. cookie manufacturer boasts that their cookies are magically baked by elves?
6. Which traditional German cookie was introduced in the early 14th century?
7. What distinct flavor do Biscochitos cookies have?
8. True or False: The fortune cookie was invented in China in the 18th century.
9. In England, what are cookies called?
10. Which Girl Scout cookie type is the most popular?

