

**U.S. Bankruptcy Court for the Middle District of Pennsylvania  
Attorney Advisory Committee  
April 24, 2014**

**Minutes**

**Attendance:**

Bar: Tom Capehart, Anne Fiorenza, Agatha McHale, Lisa Rynard, Jill Spott, Tracy Updike, and Elliott Weiss

Clerk's Office: Seth Eisenberg and Cynthia Boyle

Chambers: Judge Mary France, Judge John Thomas, Judge Robert Opel, and Catherine Sisk

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The meeting was convened at 3:00 pm and concluded at 4:00 pm. Introductions were made and Judge France welcomed the members of the Committee and Clerk's Office.

**I. Old Business**

**A. Chapter 13 Fee Task Force update. (Judge France)**

Judge France advised that the work of the fee task force had been completed and proposed changes to the Local Bankruptcy Rules and proposed new forms were submitted to the Judges and reviewed in March. The judges agreed to make some minor changes to the proposal. The task force had not recommended the use of a mandatory fee application form but recommended that an optional form be made available. The judges determined that a standardized format for the fee application with the ability for some customization would assist the judges in reviewing the applications. The judges recommended several minor changes to the Rights and Responsibilities Agreement form. The proposal as amended by the judges has been published for comment. Since the MDBBA Conference is in June, the comment period on the proposed changes to the Local Bankruptcy Rules is extended through that period, i.e., June 16, 2014. Judges will consider all comments and if no changes, the Rules/Forms will be adopted. Some substantive issues raised in the task force meetings were not resolved, such as the common use of an affidavit whereby the debtor agrees that fees otherwise payable to him or her when a case is converted or dismissed may be paid to the debtor's attorney to the extent that there are outstanding approved fees. Judge France acknowledged all individuals who were involved in the long process. This systematic process to address the issues that exist with fee applications and disclosures would be beneficial to all. Credit was given to the Ch. 13 Trustee, Charles DeHart, for bringing the rights and responsibilities agreement form used in other districts to the attention of the judges.

## **II. New Business**

### **A. Changes to the Local Rules and MDBBA Annual Conference (Judge France)**

As of this date, Judge France indicated that although there is no agenda posted for the MDBBA conference, she wanted to bring to the committee's attention that there will be at least two opportunities during the conference (morning and afternoon sessions) to discuss the changes to the Local Bankruptcy Rules and Forms. There will be plenty of opportunities for feedback on the proposed changes regarding the fee application process. There will be a general session in the morning on the proposed rules changes conducted by Judge France, Jim Jones, Markian Slobodian, and Adam Weaver. There also will be an afternoon session conducted by Lisa Rynard, Jill Spott, and Melissa VanEck which will discuss the proposed changes to the fee application process for counsel for a Chapter 13 Debtor. Lisa Rynard stated it may be more of a question and answer period than a presentation.

### **B. MMM Program survey of MDBBA practitioners (Judge France)**

Judge France commented that the idea of a survey of the local practitioners on how our local MMM Program is operating was started from comments/concerns Judge Opel had such as how many mediators were being appointed and what was the turnaround period for the program. Some other concerns were why participation in the program seems to be dropping off and why some debtors don't utilize the program and rely on direct contact with the creditor instead.

An informal review was started, but the Judges wanted a broader survey. Judge France contacted Beth Wiggins at the Federal Judicial Center. Ms. Wiggins developed a survey which was sent by direct email in early April to attorneys in the MDBBA who provide Chapter 13 Debtor services. It was noted that six responses were received the first day. Tracy Updike noted she participates in the program on approximately 50% of her Chapter 13 cases. One problem that already has been identified is that there is no mechanism to require a creditor to respond to a motion to participate. Some creditors ignore the program completely.

Judge Thomas has been skeptical about the effectiveness of the program because of the automatic stay issues and statutory limitations on the Court's power to compel creditors to negotiate.. The program in the Western District of PA seems to be very successful, but the court takes an active role in encouraging participation. Once all the results from the survey are received, the judges will review and consider making appropriate changes, if necessary, to the program.

### **C. Electronic display of trial exhibits (Judge France)**

Judge France discussed the possibility of utilizing the video conference equipment in the courtrooms for other purposes such as the electronic display of extensive trial exhibits. Perhaps the exhibits could be loaded on laptops which then could be accessed through the wireless network and not our DCN. Judge Thomas voiced the various problems with large

exhibit binders and has suggested to litigants that these exhibits could be produced on hard drives or disks for upload and review by the Court. Some parties docket the exhibits and refer to them on the record, which is helpful. Jill Spott agreed that utilizing the technology could be beneficial but was unaware the Judges were receptive to this idea.

Judge France asked if there were any ideas on how to get feedback on this idea. Judge Thomas suggested making the electronic submission of exhibit mandatory on those larger cases and trials we conduct perhaps once or twice a year. He also indicated that the ELMO system is available but not utilized. Judge Opel pointed out that Courtroom 2 in Wilkes-Barre is not equipped with the technology that exists in Harrisburg. The processing of electronic exhibits would be challenging. Courtroom 3 in Wilkes-Barre has more capabilities but is not used by Bankruptcy Court as much as Courtroom 2. Jill Spott agreed Courtroom 2 in Wilkes-Barre would have to be updated as to technology. Seth Eisenberg commented on his previous District Court experience when that court switched over to utilizing more technology in the courtroom and indicated the response by litigants was overwhelmingly positive.

After much discussion, the issue was tabled to be discussed in the future.

**D. EPOC Orders (Judge France)**

Judge France requested Seth Eisenberg update the committee on the status of the implementation of the ePOC system of electronically filing Proofs of Claim.

Seth described the ePOC system for the committee. He indicated the system actually works outside of our Electronic Case Filing (ECF) System. ECF users and other non-users can utilize the filing of electronic proofs of claim, together with amendments and withdrawals. The implementation of this system is incorporated in the proposed changes to the Local Rules. There still are technical improvements that need to be made in order to comply with LBR 3006-1. The system should be prepared to go live in the beginning on May.

**E. Next Meeting Date**

The next meeting is scheduled for June 26, 2014 at 3:00 PM.