

U.S. Bankruptcy Court for the Middle District of Pennsylvania
Attorney Liaison Committee
December 16, 2010

Minutes

Attendance:

Bar: Steven Bresset, Bob Chernicoff, Steve Gurdin, Jim Jones, Lisa Rynard, Joe Schalk, Greg Schiller, Bob Sheils, Jill Spott Tracy Updike and Larry Young

Clerk's Office: Terry Miller, Sue Frisch, Christina Kovach, Mike McHugh and Kathi Leon

Chambers: Judge Mary France, Judge John Thomas and Alex Perez

The meeting was convened at 3:00 pm and concluded at 4:15 pm. Judge France welcomed the members of the Committee and Clerk's Office.

I. Old Business

A. Mediation training update – Judge France informed the Committee that the Court is grateful to Jim Jones and the other members of the bar involved in the recent mediation training. Additional mediation related issues were discussed at this meeting. See Section II.A. below for more information.

B. Pro bono committee update – Judge Thomas expressed his appreciation to the members of the task force who have been meeting with him on a quarterly basis to talk about specific issues. The task force was created because of a shortage in the number of pro bono volunteers in certain areas of the southern tier counties. They were quickly able to fill that void and get volunteers to assist. The task force has found there are a number of county organizations securing pro bono assistance for debtors but the communication among them is poor. These services are most needed in rural areas. The task force is taking strides to organize and unify the effort so there would be one vehicle by which lawyers are assigned to qualified candidates. They hope to use Mid Penn Legal Services and North Penn Legal Services to determine economic qualifications and have a willing lawyer assigned through the Middle District Bankruptcy Bar Association by Mollie Oleyar.

Judge Thomas stated he recently did a review of cases and found there were less than 100 pro bono cases filed last year. Due to the lack of data collected in CM/ECF from the Statement re: FRBP 2016(b) and the fact that there is no single entity measuring all of the pro bono activity, he has requested Sue Frisch to add a question to case opening for the filers to indicate whether it is a pro bono case or not. This will allow a new pro bono flag to be set on the case, if appropriate, so that reports can be generated to review pro bono cases and measure the output of the bar to see how many lawyers are volunteering.

Judge Thomas has been in contact with Anne Fiorenza to see what policy changes can be made to address the concern for debtors in rural areas where a pro bono attorney is not able to travel to the remote 341 meeting location. Some suggestions were: (1) trustees in remote 341 meeting locations permit counsel in pro bono cases to attend telephonically; (2) adjourn the meeting to the trustee's office to allow the counsel to attend telephonically via a land line phone; or (3) ask a lawyer present at the 341 meeting to stand in for debtor's counsel since these are typically not complex cases.

Attorney Dawn Cutaia has agreed to use her web expertise and work with Judge Thomas to create a user friendly access area on the Court's official website to benefit pro se and pro bono filers so they know where they can get help. Pro se information that presently exists on the official website is also used by paralegals and beginning lawyers.

Judge France expressed appreciation to the task force for all of their efforts and advised it most likely will be a standing committee to monitor continuing pro bono needs.

II. New Business

A. Newly trained mediators/expanded mediator panel.

- 1. Scheduling mediation sessions.**
- 2. Payment for mediator services.**
- 3. Cathy Sisk to be the mediator coordinator for all judges.**

Judge France informed the Committee that Cathy Sisk has created a consolidated mediation spreadsheet for the Court. The judges have agreed to have a list of court appointed mediators posted on the Court's website so that parties interested in a particular person are aware they are certified. Parties will be permitted to request a specific mediator, but the Court will continue to do the official mediator appointments. Cathy will be coordinating these for all three judges so that skill sets are used districtwide and individual mediators are not overburdened.

The Committee also discussed whether changes should be made to the payment structure for mediators. Currently mediators do three (3) hours of mediation for free and after that parties need to agree how the mediator will be compensated going forward. Judge France requested input from the Committee as to whether mediators should be paid from the start of mediation. Attorney Bob Chernicoff stated he has mediated a number of cases for the Court and views it as a service to the Court to assist in disposing of a case that should not be taking up the Court's time. He does not feel changes are needed to the payment structure. Attorney Steven Bresset agreed adding that some people involved in mediation do not have the finances to pay for their attorney let alone a mediator. Judge Thomas stated the mediators are savvy enough to know when they accept a case the approximate time it will take to conduct the mediation. If a mediator thinks it will take longer than 3 hours, mediators should negotiate a fee arrangement with the participants at the inception of the mediation. Judge France agreed with Judge Thomas that it should be left to the individual mediators to make the call early on in the process and concluded no changes will be made.

B. Revisions to Model Chapter 13 Plan.

- 1. Who should be responsible for notifying court/trustee of change in conduit payments?**
- 2. Should a local rule be added requiring a mortgagee to file any notice of payment changes with the court?**

Attorney Kara Gendron proposed this topic, but was not present at the meeting. Attorney Jim Jones stated this is in the Model Chapter 13 Plan as a backup. In order for the Trustee to start the conduit payments, they need a release from the debtor stating they are allowed to talk with the mortgage company and advise them that changes need to go to both the debtor and the trustee. It is in the Model Chapter 13 Plan as a reminder to the debtor that they need to inform the Trustee in case it does not come from the mortgage company. Attorney Tracy Updike stated many times the debtor becomes aware of payment changes when the mortgage company files the change of payment notices on the docket. Attorney Joe Schalk added his clients are filing these on the docket due to a nationwide best practices document that was circulated which encourages this approach. He requested a local rule be added to require docketing payment changes, whether payments were being made through a conduit plan or not.

Judge France stated she will request Judge Opel spearhead a subcommittee of individuals who have an interest in this topic. Suggested members were: Joe Schalk, Tracy Updike, Jim Jones, Kara Gendron. The subcommittee will review the US Bankruptcy Court for the Western District of Pennsylvania's local rule and propose a draft for our rules. This will not be done immediately but rather as part of a package of changes to the local rules 90 days down the road.

C. Motions for relief from stay

- 1. Should LBR 4001-1 be amended so that only mortgagee employees may sign LBF 4001-1, in light of *In re Hill*?**
- 2. Also in light of *In re Hill*, should a copy of the Ramapo payment history report be required as well?**

Judge France informed the Committee that LBR 4001-1 and LBF 4001-1 were implemented to require standardize information on post-petition defaults in support of motions for relief from the stay in chapter 13 cases. Since the implementation of LBF 4001-1 the Chapter 13 Trustee has required conduit payments in many cases. In these situations the form has limited use because disbursements to mortgage companies are made by the Trustee. Attorney Joe Schalk stated that his clients routinely ask why are we filling out the form when the Trustee has his own ledger. There also was a discussion that although the Hill decision in the Western District suggested that the client should sign the affidavit, federal practice generally does not require verification by a party.

Judge France recommended the subcommittee formed earlier in this meeting to review the Model Ch. 13 Plan also review these issues – who should sign LBF 4001-1 and how will the form be used in cases in which mortgages are being paid through conduit plans.

D. Proper creditor's counsel's response to debtor-initiated communication regarding debtor's counsel's unresponsiveness to debtor.

Attorney Joe Schalk proposed this topic initially for the Attorney Brian Tyler situation but it now also applies to Attorney Lloyd Reichard. Judge France stated these two attorneys have stopped practicing law for personal reasons and have not followed LBR 9010-1(d) to ensure another attorney enters their appearance. Attorney Brian Tyler at least notified the Court that all of his cases would be handled by certain lawyers; however, Judge France and Judge Opel started noticing some of his cases where debtors were unrepresented and matters were pending. These cases were set for show cause hearings to find out what was going on. This process worked well because most of the debtors either informed the Court that they intended to represent themselves or obtained replacement counsel before the show cause date. Something similar may be used with Attorney Lloyd Reichard's cases so the Court is knows that debtors are aware that they are not being represented. Attorney Reichard has 137 open cases of which a substitute attorney has entered an appearance in only 64. Any time a creditor is repeatedly contacted by debtors stating they cannot reach their attorney, the US Trustee's Office should be notified so that they can investigate and file an appropriate pleading with the Court if necessary.

E. Advisory Committee.

1. Restructuring of the Advisory Committee in 2011.

Judge France informed the Committee that they are reaching the end of their tenure. She has spoken with Attorney Jill Spott about restructuring the Committee next year to be smaller and more representative, perhaps 12-16 attorneys. The member's term will be changed to a 1-2 year term. The attorneys will also be required to make a commitment to attend the meetings in either the Harrisburg or Wilkes-Barre courthouses. If too many meetings are missed, the attorney will be replaced. Attorney Jill Spott, President of the Middle District Bankruptcy Bar Association ("MDBBA") intends to post a message on the MDBBA's list serve next week with the details and request for volunteers. In January, she and Judge France will review the names of volunteers and identify the new members of the Committee. Judge France once again extended appreciation for the members and their attendance at the meetings.

2. Advisory Committee page on the Court's website.

Judge France informed the Committee that the judges have agreed to have a dedicated Attorney Advisory Committee page on the Court's website. This is found under the Legal Professional tab. Presently this page has the meeting minutes from the last three meetings. This page will be enhanced to also contain the meeting agendas and possibly a discussion board where ideas for the Committee can be submitted. It will be available to the public.

3. Dates for 2011 Advisory Committee meetings.

The next Committee meeting is Thursday, March 3, 2011 at 3:00 PM. The alternate date is Thursday, March 31, 2011 at 3:00 PM.

F. LBR for no look fee in chapter 13.

Judge Thomas stated that a lawyer recently filed an application for approval and when Attorney Rich Rogers advised that it needed to be noticed under the rules, the lawyer stated it was a no-look fee situation. The Model Ch. 13 Plan refers to the *district's* no-look fee but the Court does not have a no-look fee policy. Judge France and Judge Thomas both agreed that if an application is filed, regardless of the amount, the Court will look at it. This language is confusing and should be revised to clarify the no-look fee is the Trustee's policy. Judge France stated this matter can be addressed through a technical amendment when other changes to the Rules are made.

G. Court calendars.

Attorney Jim Jones inquired if the publishing of court calendars could be reviewed and possibly have all court calendars posted a week in advance. He stated a couple of the judges do not publish a court calendar until the prior calendar is completed. For example, next week Judge Thomas has relief from stay hearings on Tuesday and confirmation hearings on Wednesday. The calendar for Wednesday will not be published until after the Tuesday calendar is done. This practice causes difficulty for the Trustee who needs to prepare information for the confirmation hearings and post a list by noon on Tuesday for Wednesday's confirmation hearings. The Trustee's office has no idea what number the case will have on the calendar because of the manner in which the calendars are sorted (i.e., Judge Thomas' calendar uses a chronological sort and Judge Opel's calendar groups cases by topic).

Judge Thomas stated every calendar can be published at any time. He had no opinion on this since it is entirely the responsibility of the courtroom deputy. He will pass this information on to his courtroom deputy.

Attorney Tracy Updike pointed out this same issue exists with Judge Opel's calendar.

Judge France added that the difference is due to the judge's policy on last minute changes. Once her calendar is posted, no changes are made unless there is an emergency. Whereas the other judges' courtroom deputies may be making changes at the last minute which is why they are not published until shortly before the hearing date.

Terry Miller advised the Committee that he was going to demo a new real-time hearing program that will replace the publishing of court calendars. Unfortunately due to technical difficulties, he was unable to demonstrate this. He explained this new program will provide the public the ability to search court calendars by judge, trustee, hearing date, location, or time. This program pulls the data from the court calendar program, not ECF, so attorneys would be able to search for hearings anytime. A demo of this program will be posted on the Court's website for a comment period so that feedback can be received from the bar on how to improve this before implementing it.

Next Meeting: Thursday, March 3, 2011 at 3:00 pm