

U.S. Bankruptcy Court for the Middle District of Pennsylvania
Attorney Liaison Committee
December 8, 2011

Minutes

Attendance:

Bar: Brenda Bishop, Bob Chernicoff, Anne Fiorenza, Kara Gendron, Steve Gurdin, Dave Harris, Jim Jones, Dan Rheam, Lisa Rynard, Joe Schalk, Ann Swartz, Tracy Updike, Adam Weaver and Elliott Weiss

Clerk's Office: Terry Miller, Sheila Booth, Sue Frisch, Cindy Boyle and Belinda Wagner

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

The meeting was convened at 3:00 pm and concluded at 4:20 pm. Judge France welcomed the members of the Committee and Clerk's Office.

I. Old Business

A. Mortgage Modification Task Force update

Attorney Schalk reported the task force had its first phone conference meeting recently and everyone was able to participate. At this meeting, they identified how the Pennsylvania programs work and discussed in general the programs currently used in Wisconsin Eastern and Florida Middle. The participants were asked to think about what was discussed and to further look into these programs on their own. Their next meeting is scheduled for next week at which time they will address: (1) the importance of reaching out to the Bankruptcy mediators and assessing their interest level in participating in the program; and (2) reaching out to various housing agencies. The program will be dependant on mediators. If a program goes into effect, the task force is considering reaching out to the mediators for the District Court to see if they are interested in participating also.

Judge France supports the idea of including the District Court mediators and offered her assistance with the process. Judge France also thanked everyone for their work on this project and reminded that if the circumstances change and this project is no longer worthwhile, the task force is to inform the Attorney Liaison Committee. The task force will provide another update at the March, 2012 meeting.

II. New Business

A. Procedures for chapter 11 cases filed by individuals

In October, Judge France attended a session on chapter 11 cases filed by individuals at the National Conference for Bankruptcy Judges. To date, issues in these cases

have been handled on a case-by-case basis. At this session, a number of districts stated they have developed forms and procedures to assist their bar. For example, California Central has a Model Ch. 11 Individual Plan available that is optional. Judge France stated forms are something we need to have available as part of the local rules so that lawyers do not have to reinvent the wheel to create forms, particularly at case closing.

Judge France requested a subcommittee be formed for individuals interested in working her law clerk, Alex Perez and herself to review the individual chapter 11 process and identify areas where we may need local forms or supplements to the procedures to make it less confusing for the bar and clerk's office.

Attorney Chernicoff and Anne Fiorenza volunteered to participate on this subcommittee. Judge France would also like an attorney who files chapter 11s in the Wilkes-Barre divisional office to participate. Sue Frisch volunteered to run reports in CM/ECF to assist with this review. A report will be run to identify attorneys who file these types of cases in the district. Attorneys interested in volunteering or recommending a colleague for this subcommittee should contact Judge France.

B. Procedures for requesting shortened notice on self-scheduled motions

Judge France proposed this topic after several attorneys expressed some concerns and frustrations they were having in her Court the other day. She informed the Committee that the Clerk's Office will be running reports to identify filers who are having problems and will contact them to provide additional help to them regarding the process. The discussion was then opened up for the attendees to ask questions or provide feedback.

Attorney Chernicoff stated he now understands an order must be entered on a motion to shorten notice time before any associated motions are filed. In the past he would e-file both of these at the same time, but with the new noticing process, he will adjust his e-filing practices.

Attorney Updike expressed a concern with the Trustee's motion to dismiss for non-payment which now set an objection date. In the past the debtor could just pay or attend the conference. Will the case be dismissed by a case administrator if an objection is not filed? Attorney Jones stated the Trustee's office brought this issue to the attention of the Clerk's Office and it has been changed to a response date. The cases will go to a hearing.

Attorney Gurdin raised three concerns he has with the new processes. (1) There are differences among the help people in the Clerk's Office regarding when the certificate of service is to be filed. With one of his motions, Mr. McHugh advised him, prior to filing his motion, that a certificate of service was not to be filed until the motion was served. After he filed his motion, he received a call from Ms. Parker stating he needed to file the certificate of service with the motion in order for it to be complete. In his office, motions and notices are not mailed the same day as they are filed with the Court.

Terry Miller replied it is intended that the attorneys would file the motion, certificate of service and notice all at the same time. We had contemplated that service would be made by the attorneys at the same time as you are filing your motion.

Sheila Booth added that the CHS program used for self-scheduling hearings automatically calculates three (3) days to account for paper mailing per the federal rules. The events prompt when it is served so that it can calculate this date. We can accommodate the situations where service is not being made the same day by prompting "Are you serving this motion at the time of filing?" If yes, then the current functions would execute and if no, then you would be allowed to file the motion without enter the service date. If this change is made, the bar will need to understand that the Court will not be sending the filer a notice for them to serve. For certain pleadings, the Court may go ahead and calendar it. We would need to work out the dynamics of this process. This suggestion was well received by the attorneys.

(2) Attorney Gurdin would like to have form notices created and available for the attorneys where you can simply go and enter the information into the notice.

Sheila Booth advised that the sample notices on the Court's website are intended to be examples of wording for attorneys to use in form notices they create and use in their office. Form notices were not created since many attorneys prefer to provide additional information in their notices.

(3) Attorney Gurdin asked if the notices issued by the attorneys should now state "the objection date is" rather than "objections are due within XX number of days"?

Sheila Booth stated the preferred wording is "the objection date is".

Attorney Rheam brought several concerns with him to the meeting on behalf of his staff. (1) His staff are unable to open the Networking with the Court seminar handouts on the website regarding "New Procedures Manual and Self Scheduling Hearings". They called the Court for assistance and were told to look at the PDF on the website.

Sue Frisch stated there have been no reports to the Automation Department that there is a problem with this document. The Court was experiencing problems with its website on Monday, December 5, 2011, due to power issues in the Wilkes-Barre building. On that day, the Court switched to its COOP website but PDF documents were not accessible. Attorney Rheam was requested to have his staff try and again and report any problems opening this PDF to the Court. Terry Miller accessed this document during the meeting and was able to open it.

Judge Thomas added that some lawyers are aware they can file on our alternate website. But when the power issues occurred in Wilkes-Barre, he suggested to Chuck Smith, Systems Manager, that a message be sent to the Listserv and information be posted on our website ahead of time so that it is better known to all lawyers what the website address is.

(2) Attorney Rheam also asked what is going on with training now that the Court's trainer is gone? He hired a paralegal in June and has not been able to get this new hire

trained on the ECF system by the Court. A couple of WebEx training sessions were setup and cancelled. Another attorney in his hometown has also mentioned to him that they cannot get training for the ECF system either.

Terry Miller advised now that Jackie Cherrybon retired requests are being handled by the Team Leaders in each office. Prior to her retirement, she had scheduled some training classes and cancelled them. The Court is working on having some interactive programs available online for potential filers to access and then possibly do some practice filing in the training database.

Judge France suggested information be added to the Court's website regarding who to contact for Training and when it is available.

Attorney Weiss asked if there are still corrective entries available in ECF?

Sheila Booth replied corrective entries and the correspondence docket events were removed because of the manner in which they were being used. Many times they were used because the filer could not find the proper event. External filers can no longer docket correspondence, but the Court can.

The question was raised, how do you get an incorrect exhibit off the docket now? Judge Thomas stated that once it is on the docket, it is on the docket. Sheila Booth added there is a motion to redact available for these types of situations also.

Several attendees were also interested in how filers were to handle the situation where an incorrect image is attached to a motion entry. It was suggested when these situations occur that a motion to withdraw be filed and related to the motion with the incorrect image. Judge France emphasized the importance of relating on the docket and the need for the docket to make sense. Adjustments are being made to help improve the docket. If these adjustments are not helping, then a different approach will be reviewed and taken.

Judge France inquired with the attendees as to the most effective way for the Court to get information about the changes to the attorneys and their staff? It was determined it should be disseminated on both the Court's website and through the MDBBA Listerv.

Attorney Rheam suggested the Clerks do a seminar geared primarily for paralegals to deal with changes in the ECF system. The brochure for the Networking with the Court seminar did not clearly convey the magnitude of changes that were being made. Other attendees agreed with this statement and requested an encore presentation be done in Wilkes-Barre, Harrisburg and Williamsport to answer questions resulting from these changes rather than bombarding the help desk.

Terry Miller stated that the Court will try and put something together for each of the offices and also the Williamsport Courthouse. It was suggested the Williamsport program be scheduled on a day when Judge Thomas has hearings in Williamsport.

Attorney Updike stated she has noticed the additional text boxes were removed from the ECF system. She used these to add clarification when filing motions, especially motions for sale.

Sheila Booth advised the additional text boxes were removed from all motion events. A review of motion events revealed some filers were using these boxes and some were not. Once they were removed, enhancements were made to some events to prompt users for additional information so that it can be automatically added to the docket entry text. For example, the sale motions were modified to now prompt filers to enter a description of what is being sold. If something is not working right or could work better, the attorneys were requested to please notify the Clerk's Office.

C. Procedures for Debtors responding to Chapter 13 trustee's motions to dismiss for lack of feasibility

Judge France raised this issue because the Court has noticed some parties are filing amended plans rather than responses to the Chapter 13 trustee's motions to dismiss for lack of feasibility which is creating confusion. If the trustee files a motion to dismiss and no answer is filed, the case can be dismissed. An amended plan is not a valid response as the Court does not know whether it addresses the concerns outlined in the motion. Suggestions were solicited from the committee on how to educate the bar that they need to respond to these motions or the case will be dismissed.

Attorney Jones added that the Chapter 13 trustee's office has noticed that some case administrators terminate the trustee's motion to dismiss when an amended plan is filed. This is not proper since it may not necessarily do that.

Judge France requested the Chapter 13 trustee's office issue a reminder to the bar that these motions need to have a response filed or the case will be dismissed.

D. Meeting schedule for 2012

The next two Advisory Committee meetings were set for Thursday, March 8, 2012 at 3:00 PM and Thursday, June 14, 2012 at 3:00 PM.