

U.S. Bankruptcy Court for the Middle District of Pennsylvania
Attorney Liaison Committee
December 13, 2012

Minutes

Attendance:

Bar: Brenda Bishop, Bob Chernicoff, Anne Fiorenza, Steve Gurdin, Dave Harris, Jim Jones, Lisa Rynard, Jill Spott, Ann Swartz, Tracy Updike, Adam Weaver, and Elliott Weiss

Clerk's Office: Terry Miller, Cindy Boyle, and Christina Kovach

Chambers: Judge Mary France, Judge John Thomas, Judge Robert Opel

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

I. Old Business

A. Mortgage Modification Task Force update (Joe Schalk)

Attorney Schalk was not present. Tracy Updike was asked if she had a status report and indicated that she did not.

Judge France suggested using the proposed Rule as it was presented in the most recent draft provided.

Judge Opel inquired if anyone was speaking to Attorney Schalk, to please let him know that we are looking for the re-draft and that, though it is appreciated that he volunteered his time to prepare the proposed rule, it is also appreciated that he honor his commitment and provide the re-draft that was promised. The first draft was received approximately two months ago, and Judge Opel had sent comprehensive changes he had made, along with some suggested changes by Sheila Booth. Judge Opel also suggested, as an alternative, that the Court could re-draft the proposed rule with all the suggested changes.

Attorneys Updike and Swartz offered to help with the re-draft and asked that Judge Opel provide them, along with Attorneys Jones and Weiss, with everything that was sent to Attorney Schalk. Attorney Updike also indicated that she would talk to Attorney Schalk about the re-draft and assured Judge Opel that he would receive the re-draft before the end of the year.

Judge France stated that she was concerned about the timeliness of the proposed amendments going out for public comment as there were talks with PBI to set up a training session in March. Judge France indicated that she would contact PBI regarding the difficulties with the proposed rule. She also discussed the fact that the Western District of Pennsylvania has implemented a similar program to that being proposed here, thanked those that offered to step in

and get the re-draft completed, and suggested that perhaps we should go forward with the other amendments and table this proposed rule for the future.

Judge Opel indicated that he would report back in January, after the holidays, as to whether or not the amendments could go forward.

II. New Business

Judge France reported on a few matters that were not on the agenda for this meeting:

1. The Fee Committee that was formed regarding review of applications for compensation and expenses had nothing new to report;
2. A possible change to submission of pay advices had been mentioned at a previous Advisory Committee Meeting, however, there will be no changes made at this time; and,
3. Judge France asked if there were any other issues concerning the proposed amendments to the local rules or the model plan, and Judge Opel indicated that there were none.

A. Should the Advisory Committee appoint a subcommittee to comment on the proposed Federal Rules/National Model Plan (Tracy Updike)

Attorney Updike suggested the possibility of either the Advisory Committee appointing a subcommittee to comment on the proposed National Model Plan, or should the comments be submitted by a subcommittee of the Middle District Bankruptcy Bar Association (MDBBA)?

Attorneys Jones and Rynard suggested that the comments should come from the MDBBA, coordinated with other members of the Model Plan Committee, rather than a subcommittee of the Attorney Advisory Committee. Judge France agreed that it would make more sense for the comments to be submitted through the MDBBA. Judge France also suggested that perhaps a more permanent Rules and Model Plan committee should be created and that the Judges will discuss it at their next meeting.

Judge Thomas discussed the difference between a court appointed committee as opposed to an Association appointed committee, and pointing out that perhaps a mission statement for each type of committee as well as explanations as to which committee an individual should bring a question would be helpful.

Judge France explained that the Attorney Advisory Committee began in Harrisburg and then expanded as the District expanded and also explained how the MDBBA had

taken over the Model Plan Committee meetings, which then started being convened by the Attorney Advisory Committee once again.

Attorney Weiss suggested that perhaps the MDBBA should reconstitute the committee, and Attorney Jones explained how the Model Plan Committee is somewhat fluid and becomes active when it is needed, such as the most recent edits to paragraph 2(H).

Attorney Updike suggested that it would be helpful to have a listing of what committees have been formed, who is on each committee, as well as contact information so that comments can be solicited from all members. Judge Thomas suggested that such information should be made available on the MDBBA website and kept current. Attorney Updike said she would look into the matter.

B. Revision to Chapter 13 practice to enable debtors to sign and file Form 3015-5 following receipt of the trustee's cease payment letter. (Judge France)

Attorney Harris indicated that he has been receiving notices from some case administrators telling him that he is filing Form 3015-5 prematurely, and that the Form needs to be filed after the Trustee's Final Report. Attorney Harris explained that when he receives notice from the Court to file the Certificate of Financial Management, he files the Certificate, along with Form 3015-5 so that slips through the cracks and is forgotten that will affect the closing of the case or receipt of discharge. He also stated that he didn't believe that the Form is time sensitive, however, some case administrators tell him that it is being filed too soon, and to have to refile it is inconvenient, and he believes, unnecessary.

Terry Miller said that the issue might be because of requests for early discharge that are filed and this may be causing a communication error or some kind of confusion for some case administrators. Attorney Harris confirmed that he gets different responses depending on the case administrator assigned to the case.

Judge France said she did not see where there is a statutory problem and tasked Terry Miller to look into a possible problem with how things are being filed or worded in CM/ECF or the procedures that the case administrators follow.

Judge Opel quoted the Local Rule which states: “. . . discharge will not be entered unless the debtor has filed, after the completion of plan payments, Debtor's Certifications Regarding Domestic Support Obligations and Section 522(q) (L.B.F. 3015-5) and has completed an instructional course concerning personal financial management described in 11 U.S.C. §§ 111 and 1328(g)(1), and has filed a copy of Official Form 23 (Debtor's Certification of Completion of Instructional Course Concerning Personal Financial Management).”

Judge France stated that based on the reading of the Rule, it seems that it is the procedure that is out of alignment and stated again that she would task Terry Miller to look into the procedures.

Attorney Updike indicated that the docket text in CM sets a deadline for docketing these certifications with the Court. Terry Miller said he would look into the matter and believes that it is simply certain case administrators misinterpreting when filings are to be completed.

C. Noticing of nunc pro tunc applications for employment in Chapter 11 cases. (Bob Chernicoff)

Attorney Chernicoff indicated that when filing applications to employ debtor's counsel in Chapter 11 cases, no notice is required, however, when filing these application for nunc pro tunc approval, CM is indicating that notice is required. He also stated that he is fine with the noticing, but wanted to make sure that such notice is correct. Terry Miller indicated that he would look into the event and make sure that it is functioning correctly. Judge Thomas offered for consideration that he always sets hearings on nunc pro tunc motions, but has never required notice. Judge France noted that more attorneys are automatically filing motions requesting nunc pro tunc approval.

Attorney Chernicoff also noted that when filing motions for expedited hearing, there is no longer a text box provided for filing attorneys to indicate what matter on which they are seeking expedited consideration. Attorney Spott stated that the lack of text box makes it difficult to find things on the docket without that additional text box, and is also an extra expense to have to keep opening documents and paying PACER fees to find the correct document being referred to. Terry Miller said that the text box may have been removed in the effort to streamline docket entries when the new noticing policy went into effect. Judge France asked that an email be sent listing those motions which should have text boxes and Terry Miller said that he would look into the matter.

Attorney Chernicoff also discussed the problem of motions for cash collateral and emergency hearings that are requiring noticing to parties when, for the most part, the hearing date has already passed by the time the noticing requirement expires. Terry Miller said that he would look into this matter as well.

Attorney Chernicoff inquired as to why there is no longer a generic motion docket entry. He indicated that sometimes, when filing matters in Chapter 11 cases, there is no docket entry that quite fits what is being filed, and as long as the motion is filed before 5:00 p.m., while the Court is still open, it isn't a problem, however, if the motion is being filed after hours, it causes a problem as there is no docket entry that fits and the lack of a generic motion entry makes it difficult to file certain motions. Attorney Updike confirmed that she has run into the same problem where she has sometimes had to use a docket entry that isn't correct just to get her motion on the docket timely.

Terry Miller explained the problems that the generic motion entry caused when it was made available originally, however, he indicated that he would inquire with Sue Frisch as to whether or not the generic motion entry can be made available for Chapter 11 filings only, rather than globally for all chapters.

Judges Opel, France, and Thomas agreed that the text boxes are needed in some instances, and inquired as to whether it would be possible to allow for a drop down box for possible choices of text as, sometimes, the text boxes can be abused, as was the case with the Motion to Compel entry, which now has a drop down box to choose what type of Motion to Compel is being filed.

Terry Miller agreed to discuss this suggestion with Sue Frisch and indicated that it is good to review matters such as this in an attempt to reach a balance between ease of filing and streamlined filing, as well as making processing filings easier for case administrators. Judge France asked that Terry Miller come back at the next Advisory Committee meeting and report as to whether the suggestions are workable or not.

Attorney Chernicoff then indicated that he has run into a problem when filing cash collateral motions that he is unable to put in a hearing date after 5:00 p.m. if he needs a special or emergency date. Terry Miller indicated that there is no time trigger in CM which would prevent such filings. Judge Opel stated that the problem comes in because special hearings dates, like emergency hearings, need to be input by the Court. Beth Irving explained that with self-scheduled motions, if an emergency hearing is requested, the self-scheduled docket entry only allows a filing party to choose dates that are available on the regular, general calendar for each judge. In order to use a special hearing date, that needs to be added to CM by Chambers or the Courtroom Deputy, but that can only be done after the self-scheduled motion has been filed, a date selected, and then an emergency hearing motion filed. Then the date and time of hearing are modified by Chambers or the Courtroom Deputy.

D. Schedule for 2013 Advisory Committee meetings.

Judge France discussed the schedule of meeting for 2013, as well as discussed that it is time to appoint some new members as some terms have expired. She indicated that this year, a change has been made and that she asked that the MDBBA submit ten names of attorneys that they would suggest as members of the Advisory Committee, as well as solicit submissions for volunteers via the Court's website. She asked that requests to serve on the Advisory Committee be transmitted to the Court through Attorney Updike. Judge France also indicated that she has extended an offer of participation to a law professor, if they are interested in being a member of the Advisory Committee.

The tentative dates for meetings for 2013 are as follows:

March 14, 2013
June 13, 2013
September 12, 2013
December 12, 2013

E. Budget and Staff Update (Terry Miller)

Terry Miller indicated that there will be an amendment to Local Rule 7067-1 - Registry Funds. The Court will be using a new system for registry funds called CRIS which goes through the Administrative Offices and Local Rule 7067-1 will be amended to incorporate these changes.

Terry Miller also discussed the budgetary constraints that the Court is facing which is affecting the staffing formula. He discussed that case filing have been extraordinarily low, with Judge France stated that filings are the lowest they've been since 2006. Terry Miller stated that these budget constraints have prompted several offers of buyouts and staff being reduced by five positions, four being case administrators. This staff reduction has caused the Court to look at other costs, including noticing that the clerk does on behalf of Trustees.

Judge France discussed that the Administrative Office has been conducting a court by court cost analysis of costs going to the BNC, and that we do more noticing than many other courts and we are getting pressure to reduce those costs, therefore, there will be more shifting of noticing to filers. Judge Thomas indicated that Trustee will have a greater burden to do their own noticing but that the Court is trying to implement this change gradually.

Attorney Spott inquired as to whether these new noticing procedures for trustees will apply to all cases, both asset and no asset, or if it will apply only to asset cases. Judge Thomas indicated that the Court was still assessing the procedures but the general assumption is that we will still be sending notices in no asset cases.

Attorney Gurdin noted that costs of mailing are steadily going up and inquired as to whether it would be appropriate to bill clients for such costs without having to file a fee application. Attorney Harris stated that it is easier to have the plan bear out such costs in a Chapter 13 case since the shift in noticing has caused costs to go up in administering cases.

Judges Opel and France discussed that the initial fee retainer and cost reimbursement agreement should be disclosed on the 2016(b) Statement of Compensation that is filed in the beginning of a case, but that additional fees and expenses are required to be requested by subsequent fee applications. Judge Thomas acknowledged that the 2005 amendments to the Bankruptcy Code have made filings more expensive. Judge Opel suggested that perhaps provisions for costs within a plan can be worked out with the Chapter 13 trustee.

Terry Miller also mentioned that the Court is still serving the originally filed plan with the notice of confirmation hearing and pointed out that the model plan is typically ten pages long, plus the notice, which is a large expense on the Court's part. He suggested perhaps a one-page summary of the plan can be sent rather than the entire plan in order to help reduce costs.

F. Next Meeting Date

The next meeting is scheduled for March 14, 2013 at 3:00 p.m.