

U.S. Bankruptcy Court for the Middle District of Pennsylvania
Attorney Advisory Committee
February 26, 2015

Minutes

Attendance:

Bar: Hon. Samuel Bufford, Tom Capehart, Bob Chernicoff, Anne Fiorenza, Jim Jones, Lisa Rynard, Ann Swartz, Jill Spott, Tracy Updike, Henry VanEck, and Elliott Weiss

Clerk's Office: Christina Kovach and Sue Frisch

Chambers: Judge John Thomas, Judge Robert Opel, John Kelly, and Catherine Sisk

The meeting was convened at 3:00 pm and concluded at 4:45 pm. Introductions were made and Judge Thomas welcomed members of the Committee and Clerk's Office. Agenda topics were taken out of order to accommodate staff schedules.

NEW BUSINESS:

2. Procedural issues:

A. Revision of 341 notice to require Debtor id and Social Security card. (Lisa Rynard)

On behalf of the Bar, Lisa Rynard, as President of the MDBBA advised that the new 341 notice no longer advises the Debtor to bring their ID and Social Security Card. Sue Frisch indicated the form could be altered. Comments recommending this change should be sent to the Rules Committee in Washington DC by our Bar Association. Attorney VanEck pointed out that the new changes to the Federal Rules will prohibit alterations to the Official Forms. Professor Bufford indicated that even if the form can't be altered, information can always be added at the end. After discussion, Judge Thomas agreed to recommend that the information requiring the Debtor bring ID and Social Security card be added back to the form.

B. Notice requirements for rescheduled 341s. (Lisa Rynard)

Attorney Rynard is requesting clarification as to the Notices which reschedule 341 meetings. LBR 2002-1(d)(3) is not clear as to who sends these Notices. Attorney Jones indicated the virtual entry resolves this issue because it does indicate who is to do the noticing. Ms. Kovach advised that pro se debtors are sent a paper copy of the rescheduled notice. Ms. Frisch also advised that a new docketing procedure will be implemented on March 2, 2015 and will be posted on our website which should address these concerns. Judge Thomas decided no action would be needed on this issue at this time since the consensus was to let the new docketing procedure take effect.

C. Deferring Relief hearings until after the 341. (Jill Spott)

Attorney Spott requested that hearings on Motions for Relief be scheduled after the 341 meeting has been held. Ms. Frisch pointed out that Relief Motions are self-scheduled and that hearing dates more than 30 days out are available to the Movant. A relief motion must be heard

within 30 days or relief is automatic. Without a waiver from the Movant, the statute stands. Judge Thomas, Judge Opel and Professor Bufford all agreed that the statute is inflexible and technically, the stay is gone after 30 days. Judge Thomas concluded this is a problem without a solution at this time.

D. Deferring 13 Confirmation hearings until after claims bar date. (Jill Spott)

Attorney Spott requested that confirmation hearings be postponed until after the claims bar date inasmuch as the Debtor has to serve an amended plan every time a new claim is filed to address that plan. Cost is a concern to the Debtor. Judge Thomas pointed out that the statute requires a confirmation hearing be held within 45 days. Attorney Jones suggested that counsel contact the Trustee's office and it will be rescheduled to after the claims bar date, after the first hearing is scheduled. If there is objection, consent would be needed. Otherwise, it will be continued. Attorney VanEck advised that the proposed amendments for Rule 3002 shortens the claims bar date and perhaps this will address this issue if the new Rule is adopted. Judge Thomas concluded there was not much that can be done about this issue at this time.

3. Docketing changes:

A. Allowing docket to reflect the amount of fee applications and the amount of fee awards. (Jill Spott)

Judge Thomas deferred this issue to Sue Frisch. Ms. Frisch indicated that the dockets did not reflect this information at one time, but filers made numerous mistakes and discrepancies between the image and docket entries so the docket entries were more generalized. The Judges favor no change to these docket entries at this time. It was suggested that no one should rely on the accuracy of the dockets and each image should be opened by the user.

1. General items:

B. Implementation of text (virtual) orders

Judge Thomas informed the panel that the Judges in the Middle District are attempting to utilize text (virtual) Orders more inasmuch as there is a national push in the Judiciary to use text Orders. The Judge felt these type of Orders may address the above issue on Fee Orders.

3. Docketing changes:

B. Allowing docket to reflect whether an amendment is an "addition, deletion, or revision" (Jill Spott)

Judge Thomas agreed with Attorney Spott that there is a problem with the way amendments are being docketed. These documents need to be opened and reviewed to determine how a pleading is being amended. Attorney Chernicoff pointed out that a cover sheet explaining the amendment should be filed. Ms. Kovach explained that a Notice to Filing Party is sent if the amendment is not filed properly within 14 days. Some of these deficiencies may be addressed by use of text Orders.

OLD BUSINESS:

1. Possibility of Chapter 13 Pro Bono services

Judge Thomas asked Attorney Rynard to report. Attorney Rynard explained that the issue of pro bono or reduced fees for Ch. 13 cases was taken up with the Board and after 4 months, it was voted not to take a stand on this issue. Attorney Spott pointed out that pro bono

services should not be offered to those who do not qualify under legal services guidelines. Judge Thomas pointed out that there are actually some attorneys taking Ch. 13 pro bono cases. He also suggested Attorney Rynard discuss this matter with Judge France since this topic was initially placed on the agenda by her.

2. Mortgage Mediation Program, current status (Tracy Updike and Ann Swartz)

Attorneys Updike and Swartz reported that the previous members of this subcommittee were contacted and it was decided they will reconvene. Northern tier members are needed. An email will be sent out to restart meetings. More input is needed to strengthen the program. This matter will be tabled until the next advisory meeting.

3. Chapter 13 Breakfast Club

Judge Thomas indicated Judge France suggested that the bench and bar have meetings. Attorney Rynard said the Board considered it but did not have enough information as to the details of what the meetings would be about; would CLE's be offered; etc. Judge Thomas said there was a willingness to meet with the bar in a less formal setting, but Judge Opel was wary of ethical issues that may arise. Judge Thomas suggested Attorney Rynard meet with Judge France to discuss this further. This matter will be tabled until the next advisory meeting.

NEW BUSINESS:

1. General items:

A. Use of electronic exhibits

Judge Thomas informed the committee that his chambers would encourage the use of electronic exhibits. Changes will be made to his Practice and Procedures on our website. The other Judges are also looking at options that will make it easier for attorneys to submit exhibits either by email or USB flash drive. Judge Opel likes the use of USB flash drives because they are easy to retain too. However, some flash drives cannot be loaded due to security issues. Judge Opel will not be requiring electronic exhibits nor expressing this be done for his matters.

4. Lawyers concerns:

A. Automatically adding to adversaries an entity that files a Rule 2002 request for notice so they get notices of activity. (Jill Spott)

Attorney Spott discussed this matter and explained it would be easier on parties if they were notified when an adversary was filed. Sue Frisch indicated it would require a significant amount of work. Attorney Chernicoff pointed out that adversaries are first docketed on the main case and parties would be notified that way. Attorney Spott accepted there was no resolution to this issue.

B. Are the rules being applied to pro se individuals? (Lisa Rynard)

Attorney Rynard expressed a concern of the Board that perhaps some preferential treatment was being given to pro se individuals with regard to certain rules, i.e., serving an amended plan. The Judges did admit that perhaps they are a little less formal with pro se parties and inexperienced lawyers. They try to treat everyone fairly. Sue Frisch explained that pro se debtors do serve the amended plans but that the clerk's office serves the initial plan with the confirmation hearing notices and the rescheduled 341 notices so that there are minimal mistakes. Judge Opel pointed out that the Clerk cannot surcharge pro ses for services.

5. Possible local rule/form changes:

A. Revision of Local Rule 2016(2) to clarify that election of the Presumed Reasonable Fee (PRF) normally precludes other fee arrangements for work up to confirmation.. Option for attorney fees in Model Plan allows for the selection of only one choice under attorney fees, the PRF or an hourly rate.

Judge Thomas indicated this matter was brought to his attention by Judge France. Perhaps the form needs more clarification. Attorney Jones explained that Trustee DeHart objects when both boxes are checked. Judge Thomas will discuss this revision with Judge France to provide suggestions on how to improve this form.

B. Alteration of the procedure certifying and giving limited notices for Post Confirmation Amended Chapter 13 plans. (James Jones)

Attorney Jones questioned why certain modified plans were being given expedited treatment. It is difficult for the Trustee to review these modified plans in the time allowed. Existing Clerk's procedures provide that once a certification is filed, the Clerk's office holds for 7-14 days and sends the plan to Chambers. Other modifications are usually not approved for 21 days. Sue Frisch will change procedures so that there is a 21 day period lapsing before Chambers is asked to enter an Order.

C. Should the rules require that Briefs and Motions be separate documents in Adversary proceedings? (Lisa Rynard)

Attorney Rynard expressed the concern that Motions are being filed with case law and therein lies confusion as to when briefs should be filed. She asked if our local rules could be amended to specify that these be filed separately. Judge Thomas indicated the District Court Rules, which are referenced in our Local Bankruptcy Rules, imply that separate Motions and Briefs should be filed in adversary proceedings. He suggested the Bar draft a proposed local rule for the Judges to review.

PROPOSED MEETING DATES FOR 2015:

The next meeting is scheduled for May 14, 2015 at 3:00 pm. However, since there are conflicts for several committee members, the new meeting date will be **June 4, 2015 at 3:00 pm.**