

U.S. Bankruptcy Court for the Middle District of Pennsylvania  
Attorney Advisory Committee  
July 25, 2019 at 3:00 PM

Harrisburg: Henry Van Eck, Jim Jones, Kara Gendron, Lisa Rynard, Gary Imblum, Tracy Updike, Rick Thompson, John Hykes

Wilkes-Barre: Robert Opel, David Harris, Seth Eisenberg, Carlo Sabatini, Lisa Doran

On the phone: Kevin Frankel, Anne Fiorenza, Tullio DeLuca, Larry Young

The meeting began at 2:57 PM. Judge Van Eck welcomed the new members and gave an opening presentation. Judge Van Eck will now be taking charge of the meetings in Judge Thomas' stead.

**AGENDA**

**OLD BUSINESS:**

1. New Federal and Local Rule Amendments follow up, if any (Judge Van Eck/Jim Jones)

Jim Jones reported that Federal Rule of Bankruptcy Procedure 4001(c) no longer applies to Chapter 13 cases. Rules as currently stated are formulated for Chapter 11s and are unworkable for Chapter 13. Jurisdictions are left to come up with their own rules for how to obtain credit in a Chapter 13. Last year, we drafted rules to combine obtaining credit and cash collateral. We drafted two sets of rules. A short set that combines cash collateral and obtaining credit which applies both to Chapter 13 and the rest of the chapters. We also drafted a longer form rule as well which incorporates most of 4001 into the local rule to make it clearer. Now the local rule will contain all you need to know, for "one-stop shopping." However, the federal rules forbid duplication and contradiction in the local rules. The two proposals have been circulating. As of December 1, 2019, we will have no federal rules regarding obtaining credit in Chapter 13. Judge Van Eck suggested forming a rules subcommittee. There are only four rules changing this year. Maybe the Attorney Advisory Committee can work with the MDBBA Rules Committee. There has not been substantial participation from Chapter 11 practitioners. Judge Opel suggested adding an amendment to Local Bankruptcy Rule 4001-3 to clarify that it does not apply to Chapter 13 cases. If the Federal Rule is going to explicitly exclude Chapter 13, the local rule should match.

Judge Van Eck noted that there is a lot of duplication in our local rules. Judge Van Eck suggested that the committee revisit this discussion under item number 5 in New Business and perhaps discuss selecting a rules subcommittee.

2. Model Plan follow up, if any (Jim Jones)

Jim Jones likes the idea of yearly review of the model plan to determine if we can make it better. Kara Gendron does not want to re-evaluate the model plan every year. A yearly change makes it difficult for practitioners when modifying plans throughout a Chapter 13 case. Jim Jones suggests removing this from the agenda. Tabled for now.

3. Video Appearance at hearings via CourtCall/other means (Rick Thompson/Judge Opel)

Rick Thompson indicated that we have been talking about this for a year. There have been a few test calls. There are a few remaining questions. Does the bar want to pay additional money to appear through video? Additionally, the technology might not be quite good enough. The Owl device was promising, but did not quite perform correctly. Rick Thompson has evaluated other technologies as well. CourtCall wants to run some tests with other technology. It does not seem to be as reliable as the phone is at this point. Video appearance would cost \$15 more per call than audio only.

Judge Opel sees the potential, because it can be difficult to interact with attorneys on CourtCall, especially if there are several on the phone. Judge Opel also has not seen interest from the bar. Maybe there is some interest in Chapter 11 where there are more parties on the phone and larger budgets. Judge Van Eck also noted that no one is clamoring for the ability to appear by telephone. Rick Thompson is going to continue contacts with CourtCall to allow them to propose and test new technology.

Judge Van Eck indicated that some attorneys have asked whether they can appear by video in the other courthouse. We already have the technology to do this, but no further action will be taken until there is more demand. Gary Imblum suggested that Rick Thompson come back to the committee when he feels the technology is ready to implement. Tracy Updike suggested circulating the item to the bar more broadly at that point.

Rick Thompson noted that we have the capability to allow parties to call in without incurring CourtCall costs, to be used in limited circumstances.

This item is going to be removed from the agenda.

4. Status of Local Bankruptcy Forms in pdf and Word Formats, update (Rick Thompson)

Rick Thompson noted that there has been no update since the last meeting. There are several federal forms in PDF that are not fillable. No one has indicated any interest in converting them to a fillable format, so no action has been taken on any of the forms. Judge Van Eck asked if we are maintaining both the individual local rules and the PDF form. We are maintaining both, but eventually we will go to a PDF form only.

This item is going to come off the agenda.

No additional Old Business.

**NEW BUSINESS:**

1. Discussion on dates for the third quarter meeting

- a. Proposed dates: October 21, October 24, October 28, October 31

The committee selected October 24<sup>th</sup> at 3:00PM for the next meeting.

2. Discussion on the Local Rules and redundancy with Federal Rules (Judge Van Eck)

Judge Van Eck identified two schools of thought. (1) We want our rules to be a one-stop shop; and (2) attorneys should be able to go to the federal rules as well as the local rules. There is a rule that districts should avoid redundancy and contradiction between the local rules and federal rules. Since our local rules are so robust, we run the risk of having a rules conflict. The committee should think about the local rules through the lens of their purpose. Their purpose should guide the process of changing them. Judge Opel offered a historical perspective of the local rules. Local rules were created either to fill a void left by the federal rules or clarify a perceived ambiguity or practice problem within a local rule. Kara Gendron added that the more robust the local rules are, the more work is required when the federal rules change. This process should be undertaken in concert with the MDBBA Rules Committee. This is a long-term goal and it should not be attempted rapidly. Tracy Updike suggested using the historical purpose perspective as a guiding principal for revisions.

Jim Jones is the Chair of the MDBBA Rules Committee. Judge Van Eck suggested having a discussion with the MDBBA to identify who is on its Rules Committee.

Action item for next Attorney Advisory Committee meeting: Set goals and timeline for rule review

3. Model Chapter 13 Plan Form (New) (Judge Van Eck)

Judge Van Eck has noticed that creditors are objecting to Chapter 13 plans on the grounds that the plan does not provide that they will retain their liens under § 1325(a)(5). It is not expressly stated in our plan. This would be a simple change to assuage creditors' concerns. This would have no impact on debtors' plans more broadly. Kara Gendron adds that any updated plan does cause problems for debtors' attorneys. No one on the committee indicated interest in making changes to the plan. Tracy Updike suggested making that change later as part of a package of changes when more issues become apparent. Lisa Doran pointed out an error on the second page of the model plan regarding funding from liquidation. Rick Thompson indicated that he could fix that in the pdf form.

Carlo Sabatini noted that we need to balance the needs of debtors' attorneys with possible plan issues. Carlo Sabatini suggested a local rule allowing debtors to use the version of the plan that existed on the date they filed. Lisa Doran noted that that existed in the past. Judge Van Eck asked if we can grandfather in older compliant plans. Gary Imblum also expressed interest in that.

Judge Van Eck suggested a separate subcommittee for the model plan conversation. Judge Van Eck asked if Jim Jones could raise it at the next MDBBA meeting and poll the interest in making such changes. The following are questions that should be taken to the MDBBA as well: Are tweaks necessary to the current model plan? Should we wait until there are multiple small things can be changed? Should we grandfather in older compliant model plans or would that cause too much confusion?

This item will remain on the agenda as old business for Jim Jones to report on whether there was interest in changing from the MDBBA.

- 4. NextGen ECF/ committee feedback on the court's communication plan with attorneys (Rick Thompson)

Rick Thompson talked about migrating to NextGen ECF. New Jersey has been on NextGen for years, but no other courts in the Third Circuit have changed yet. There is little value to attorneys unless you file frequently in other districts. The benefit for attorneys is that they can use just one password on the PACER side and the ECF side. Attorneys will have to upgrade their PACER accounts first or attorneys will not be able to access NextGen to file anything. It is important that we communicate this to attorneys early and clearly. The change is happening the weekend of January 10, 2020 through January 12, 2020. Rick Thompson wants to take our system down on Thursday, January 9, but that means ECF would be down on Friday, January 10. There is a backup system that pro se parties are able to use for filing. That would be available to everyone on that Friday. The attorneys on the committee had no issue with that proposal as long as there is a way to file. Judge Opel suggested putting a notice on the website and the listserv about the need to update PACER accounts.

While the system is down on January 10, attorneys would not be able to access dockets. This item will stay on the agenda as old business.

- 5. Federal Bankruptcy Rules changing 12/1/19 – 4001, 6007, 9036, 9037

Jim Jones wonders whether there needs to be a change on the local rules for any except 4001.

This item is tabled.

- 6. New committee goals (Judge Van Eck)

Judge Van Eck asked the committee members to consider long-term goals for their time on the committee.

Adjourned at 4:06PM.

**FUTURE MEETING DATE(S): October 24, 2019 at 3:00PM**

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**Dial-in Instructions:**

**Telephone Number 703-724-3100**

**Access Code: 2110850#**

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