

U.S. Bankruptcy Court for the Middle District of Pennsylvania
Attorney Advisory Committee
June 4, 2015

Minutes

Attendance:

Bar: Jim Jones, Juliet Moringiello; Lisa Rynard, Ann Swartz, Tracy Updike, and Henry VanEck

Clerk's Office: Terry Miller; Seth Eisenberg; and Cynthia Boyle

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

OLD BUSINESS:

1. Revision of 341 notice to require Debtor ID and Social Security card. (Judge Thomas)

Judge Thomas reminded everyone that the new changes to the Federal Rules will prohibit alterations to the Official Forms. However, after the Judges' meeting, it was agreed the information requiring the Debtor to bring ID and a Social Security card will be added back to the form. Terry Miller indicated the automation department is working on implementation but no time frame yet as to when this would be completed.

2. Mortgage Modification Mediation Program update (Tracy Updike and Ann Swartz)

Attorney Ann Swartz reported that committee members have met to discuss various ways to make the program more effective. The committee would like to restructure the local rule which would give the participants the option to enter the program using the portal system or by utilizing counsel/mediators. The program as it stands now is not effective and too formula driven with no place for mediators to contribute to the process. It was suggested to extend to the program 120 days with the option of requesting a status conference before the court should problems arise. Attorney Tracy Updike suggested that our program be somewhat modeled after the Western District of PA with not much Court involvement unless there is a delay in the process. The committee would like approximately 30-60 days to redraft the local rule and present same to the Rules committee. Judge Thomas agreed. Judge France has concerns with eliminating mediators from the program and offered to submit the name of a mediator she was familiar with that the committee can contact for feedback on the program. The committee will report back at the next advisory meeting as to the status of the revised rule.

3. MDBBA Rules Committee update (Tracy Updike)

Attorney Updike informed the group that the committee has met and will be drafting proposed changes to two rules. First, the committee suggested a local rule which requires Motions to Dismiss/Convert be filed as separate documents. Secondly, a suggestion was made

that a local rule be drafted indicating Motions and Briefs be filed as separate documents. Motions are being filed containing case law, and it is too confusing to litigants as to whether that constitutes the filing of a brief which then requires a responsive brief. The proposed rules will be drafted by the committee and sent to Judge Opel for discussion at the next Judges' meeting.

4. Chapter 13 Breakfast Club update (Lisa Rynard)

Attorney Lisa Rynard reported she met with Judge France who shared her ideas as to the establishment of a Chapter 13 Breakfast Club. The Club was discussed with the members of the bar and the issue of CLE credits was raised. Attorney Swartz is researching the prospect of obtaining CLE credits and what it would cost, etc. Judge France suggested that offering a quick CLE credit for attending the meeting (no more than 1 hour) might entice more of a response from bar in attending the meetings. She also indicated that the Judges' involvement would be limited and lawyers would volunteer to do the CLE programs. She spoke with Attorney Larry Young who also suggested that the meeting be offered via phone and/or video. However, there seems to be a problem with obtaining CLE credits via phone/video. The matter will be researched more and discussed at the next MDBBA board meeting in July. The matter will then be discussed at the next advisory meeting.

5. Possibility of Chapter 13 Pro Bono services (Lisa Rynard/Judge France)

Attorney Rynard reported that a motion was made at the previous board meeting and the MDBBA voted to do nothing further on the matter. It was agreed that discussion of this topic is terminated.

NEW BUSINESS:

1. General items:

Pro Se Debtor Issues/Self-Help Center (Lisa Rynard/Terry Miller)

Terry Miller reported that he and several members of the Clerk's staff recently returned from a conference regarding pro se debtor issues.. Inasmuch as there has been a steady yearly increase in pro se filings in our Court, he would like to implement a self-help center in both Court locations for pro se filers in our district and model same after the center which was established in Arizona during his tenure there as Clerk. He also reported that information about the clinic would be placed on our website with various links to outside resources. Attorney Rynard informed the group that the board's response has been positive to the idea of creating and supporting a center, and a motion was passed to assist the Clerk's office in this endeavor with volunteer participation. The Clerk will work with the MDBBA, the pro bono committee, and local law schools such as Widener and their incubator program in developing a steering committee, soliciting attorneys to volunteer periodically, and creating a committee to oversee the self-help center. An informational email will be sent out to bar. Judge Thomas suggested that Terry report back on the progress at the next advisory meeting.

2. Procedural issues:

A. Revision of Local Bankruptcy Form 3007-1. Local Bankruptcy Rule 3007-1(e)(Entry of Default Judgment). (Judges/Jim Jones)

Judge Thomas opened this issue with an overall discussion of the claims litigation practice and procedures of our Court. Judge France has followed our procedures for years and

has some serious concerns with due process and the way that objections to claims are handled. Attorney Jim Jones indicated he has concerns with the local rules on objections to claims and the default judgment process. Judge Thomas indicated his practice is to review claims litigation prior to entering default. Federal Rules suggest a hearing is to be scheduled on objections to claims much like a contested matter. After much discussion on procedure, the contents of the notice, and prima facie evidence, everyone agreed the local rules on objections to claims need to be reviewed and possibly edited and/or sections revoked. The Judges will discuss this local rule next week and perhaps revoke part of the rule within a certain time period so as to give proper notice to the bar. The bar will be notified accordingly.

B. Notice requirement to employers in wage attachment motions (Tracy Updike)

Attorney Updike reported that practitioners seem to be having an issue with this topic and are concerned with the delay of the notice going out to the employers, which, in turn, delays timely payments being made to the Trustee by the Debtor. Practitioners are finding it troublesome locating the proper individuals at the employers being able to consent to a wage attachment. Questions were raised as to the basis of where the notice came from because it is not mentioned in any local rule. Judge Thomas suggested that perhaps the employer should be named on the pleading and served a copy of the Motion prior to an Order being entered ex parte. His procedures as listed on the Court's website will be updated to suggest this practice. Judge Thomas would like to review the Guide to Docketing and Noticing that states a 21-day notice needs to go out on these Motions. The matter will be reviewed.

3. Lawyers-Judges concerns:

Rule 2016-2 (Compensation of Debtors' Attorneys in Chapter 13 Cases)

Clarification of (h).

Pre-October 1, 2014 case dismissal fee applications. (Tracy Updike/Robert Chernicoff)

In re Viegelahn, 2015 WL 2340847 (U.S., May 18, 2015)

Judge Thomas opened discussion on this matter with a review of the *In re Viegelahn* case as cited above, which affects LBR 2016-2(h). This recent Supreme Court case may cause changes to our Local Bankruptcy Rules and will need to be reviewed more closely to determine how it affects current cases, which may need to be addressed on a case-by-case basis. Attorney Updike also had some concerns with regard to pre-October 1, 2014 case dismissal fee applications; how these cases will be handled; and the effectiveness of the affidavits of disbursements for pre-October 1, 2014 cases. The local rule is unclear to her. Judge Opel indicated that the local rule seems clear and that there is no retroactivity to these rules.

MEETING DATES FOR 2015:

The next meeting is scheduled for August 13, 2015 at 3:00 pm. If there are conflicts for several committee members due to planned summer vacations, please contact Chambers and a new meeting date will be selected after Labor Day.