

**U.S. Bankruptcy Court for the Middle District of Pennsylvania
Attorney Liaison Committee
March 11, 2010**

Minutes

Attendance:

Bar: Tim Baker, Brenda Bishop, Mike Csonka, Anne Fiorenza, Kara Gendron, Steve Gurdin, Jim Jones, Lisa Rynard, Joe Schalk, Jill Spott, Brian Tyler, Tracy Updike and Richard Wiest.

Clerk's Office: Terry Miller, Ellen Linskey, Sue Frisch, Cindy Boyle, Christina Kovach and Kathi Leon

Chambers: Judge Mary France and Judge Bob Opel

The meeting was convened at 3:00 pm and concluded at 4:45 pm. Judge France started the meeting by welcoming the members of the Committee and Clerk's Office.

I. Old Business

A. Mediation training update – Jim Jones informed the Committee that the mediation training will be held on June 4, 5 and 25th. It is a three-day session and attendees must attend all three dates in order to complete the training. The training will be conducted by Nancy Welsh from Dickinson School of Law. The training location has not been finalized, but may be held in Grantville. The MDBBA will post information on its website later this month regarding this training. The US Bankruptcy Court will also post a notice on their website with a link to the MDBBA webpage. The training will be free for MDBBA members and depending on the demand, may be expanded to attorneys in the Eastern and Western Districts of Pennsylvania for a fee.

B. Pro bono committee update – Brian Tyler reported that the Pro Bono Task Force, chaired by Judge Thomas, has been meeting every 3-4 weeks. They have addressed the immediate need which prompted its creation and are now reviewing the overall services given to pro bono filers and how that work is distributed through Legal Services. Soon the MDBBA will take over the assignment of pro bono work throughout the Middle District so that there is better distribution of work amongst the bar. The Pro Bono Task Force has been expanded to include all of the Directors of Legal Services and representatives of area colleges.

Judge France expressed the appreciation of the Court for all who helped with addressing and resolving the pro bono filer problem in Dauphin County. She also informed the Committee that Dorie Mott was recently recognized by Dauphin County for all of her contributions to pro bono work this past year.

Judge Opel informed the Committee that the US Bankruptcy Court's website was rated as one of the least user friendly and informative websites for pro sees throughout the country. The Court is planning a vast overhaul of their website. They are committed to having a lot more "how to" information along with links and resources on the website but are not encouraging debtors to file as pro se. Terry Miller advised that the Court's programmer has put together an initial draft of a new website which is better than the current one but the content needs additional work.

Brian Tyler and Joe Schalk volunteered to draft a list of resources that are available for the Clerk's Office to better assist callers inquiring about the availability of pro bono services.

Anne Fiorenza advised that the US Trustee's Office has been following cases in other districts regarding petition preparers and criminal activity. Judge France advised that there has been an increase in petition prepared cases in the Middle District.

C. Rule 26 procedures - stipulations – At the November 12, 2009 meeting, Steve Gurdin raised this issue and advised that it was resolved in its entirety at the last meeting.

II. New Business

A. Certification of default procedures - Motions for relief from stay – Judge France informed the Committee that the Court worked with the Clerk's Office in revising their procedures to have these be handled in a more consistent manner. If an objection to certification of default is filed with concurrence, then an order denying the certification of default will be entered. If the objection to certification of default is filed without concurrence after the order is entered granting default, then no action will be taken unless there is a motion for reconsideration. If the objection to certification of default is filed without concurrence before an order is entered, then these will be reviewed by chambers. This is where the bar may see some differences among the judges.

Judge Opel remarked that the parties largely control the process by the wording in the stipulations. This is a negotiating opportunity for both sides and encouraged attorneys to take the time to look at each individual stipulation before signing it. Judge France added that stipulations should not be a boiler-plate form but rather customized for each situation.

B. Conduit payments for secured loans in chapter 13 cases – Brian Manning was not able to attend the meeting but prior to the meeting circulated his concerns and position on this topic. Jim Jones informed the Committee that the Trustee's office is not looking for a mandatory local rule requiring this in all cases. The Trustee created guidelines for when it would be good to have a conduit payment in place and when objections would be filed accordingly. As cases come through they are continually refining their position on where the Trustee would like to push for conduit payments depending on feasibility component. The Trustee has formed a committee; however, they have not met yet.

Judge Opel informed the Committee he is not comfortable with conduit payments and has written an opinion (In re: Stonier) which has been published regarding requiring conduit payments. This was entered in the absence of a local rule.

Judge France deferred this issue to the chapter 13 trustee and US Trustee's Office. During the discussion at this meeting, there were diverse views about the benefits of conduit payments that were not divided along typical creditor/debtor lines. Attorneys with an interest in this topic should work with the chapter 13 trustee to develop guidelines as to when conduit payments may be appropriate. It would be beneficial for everyone to have clarity in the process. In the absence of a local rule, the enforcement of conduit payments needs to be litigated on a case by case basis.

C. Reaffirmation agreement cover sheet - fillable form testing – Sue Frisch from the Clerk's Office has created a Reaffirmation Agreement Package similar to what the NJ Bankruptcy Court created. It is a questionnaire that is completed and the responses are automatically added to the Reaffirmation Agreement Cover Sheet (Official Form 27) and the Reaffirmation Agreement Form (Local Bankruptcy Form 4008-1) eliminating the need to complete two forms. These forms were revised December 1, 2009 and will be revised again April 1, 2010 along with a few other Official Forms. (NOTE: Information regarding national form changes effective 04/01/2010 is available at <http://www.uscourts.gov/bkforms/> under the Pending Forms link.) Once the changes for April 1, 2010 are made to this Reaffirmation Agreement Package, a link to it will be posted on the Court's website with a time period for people to test it out and provide feedback. The suggestion was made to inform both debtor and creditor attorneys of this testing opportunity. The NJ Bankruptcy Court asked their bar to test it and their feedback showed that it would be helpful for debtors but not the creditor attorneys who represent the larger creditors. Kara Gendron added that this form will be of limited use to debtors' attorneys because creditors typically draft reaffirmation agreements and send them to debtors' counsel.

D. Standards for marketing in § 363 sales – Brenda Bishop informed the Committee on Nick Lamberti's behalf that he recently suggested standards be implemented for evaluating § 363 sale motions. This could be done through a local rule or the identification of basic elements that need to be in § 363 sale motions. Anne Fiorenza has discussed this issue with Nick Lamberti and she does not think adopting local standards is needed since inquiries under § 363 are fact specific. Judge Opel and Judge France both agreed in the need to evaluate these motions on a case-by-case basis. Anne Fiorenza advised the topic has been addressed and if it needs to be addressed further that can be done.

E. Court call/Request for telephonic appearance form – Tracy Updike inquired if something could be done to inform attorneys, prior to a hearing, of who will be appearing via Court Call. Now that Court Call is being used, negotiating with opposing counsel before appearing in front of the judge has become difficult and you do not always know whether opposing counsel is on the line or not. Two suggestions were discussed: (1) hearing lists posted outside the courtroom could indicate who is scheduled to attend via Court Call; and (2) a text entry be available for Court Call participants to make on the case advising of their intention to appear via Court Call. Neither of these suggestions addressed the issue of last minute appearances via Court Call. Judge Opel advised the Court will discuss this issue before making a final commitment to these suggestions.

F. Other issues?

1. Sales – Bryan Tyler informed the Committee he has noticed confusion among the Clerk's Office staff when it comes to processing free and clear sales and non free and clear sales when you are selling something and the plan has been confirmed. Some return a notice back to counsel for service and some do not. There is no consistency in the District on this issue. These are being filed for the purpose of receiving a comfort order. Judge France and Judge Opel explained that the willingness of a judge to provide a comfort order in a chapter 13 case after a plan has been confirmed and property vests in the debtor at confirmation varies from judge to judge. Judge Opel added that this might be a matter for the Model Ch 13 Plan Committee to take into consideration also.

2. Need for an emergency judge – Tracy Updike raised this issue on behalf of Bob Chernicoff. Hearings on Ch. 11 first day motions can be difficult when the assigned judge is out of town. It was requested that a designated emergency judge policy be created so that no matter who is assigned to the case, there is always a judge available to deal with hearings immediately. The Court will be discussing this issue at an upcoming meeting. The Eastern District of Pennsylvania has an emergency judge process in place which will also be looked into.

Next Meeting: Thursday, _____, 2010 at 3:00 pm.