

U.S. Bankruptcy Court for the Middle District of Pennsylvania
Attorney Liaison Committee
March 8, 2012

Minutes

Attendance:

Bar: Brenda Bishop, Bob Chernicoff, Kara Gendron, Steve Gurdin, Dave Harris, Jim Jones, Lisa Rynard, Joe Schalk, Ann Swartz, Tracy Updike, Adam Weaver and Elliott Weiss

Clerk's Office: Terry Miller, Sheila Booth, Sue Frisch, Mike McHugh and Christina Kovach

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

The meeting was convened at 3:00 pm and concluded at 4:05 pm. Judge France welcomed the members of the Committee and Clerk's Office.

I. Old Business

A. Mortgage Modification Task Force update – policy, pleadings, and orders related to Mortgage Modification Mediation Program drafted. Task Force telephone conference set for 3/9/12. (Joe Schalk)

Attorney Schalk reported the task force has a conference call set for Friday, March 9, 2012. A combination of the Wisconsin and Florida rules were circulated to the members as a draft proposal for this Court. They have made good progress and will discuss the draft during tomorrow's call so that participants can interject their thoughts and ideas before it is presented to the Court for consideration. Attorney Schalk added this would be a worthwhile topic to review at the MDBBA Conference in June.

B. Procedures and model forms for individual chapter 11 cases. (Judge France)

At the last meeting, Judge France raised this topic of reviewing the individual chapter 11 process to identify areas where we may need local forms or supplements to make it less confusing for the bar and clerk's office. After reviewing statistical information Sue Frisch provided regarding Ch. 11 individual cases by judge, county, office, and disposition, this suggested topic is withdrawn. It was withdrawn primarily because in the last four (4) years, only thirty-four (34) individual Ch. 11 cases have been filed. Of those, only five (5) have confirmed plans.

Judge Opel added there are official forms available on the US Court's website (<http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>) for small business cases. Official Form 25A (Plan of Reorganization in Small Business Case under Chapter 11), Official Form 25B (Disclosure Statement in Small Business Case under Chapter 11), and

Official Form 25C (Small Business Monthly Operating Report). These forms may be useful to attorneys when drafting individual chapter 11 plans.

II. New Business

A. Procedures and rationale for sending notices to the mailing matrix for motions to suspend chapter 13 trustee payments. (Tracy Updike)

Attorney Updike proposed this topic because there is confusion with this procedural change. She did not recall seeing it in the revised local rules and only learned of it recently when she e-filed one of these motions. Where did this change come from? These motions are not changing treatment to any creditors of the plan, so why does the chart provided by the Clerk's office state this is a 21-day passive notice on the matrix? The noticing of motions is going smoother but she is still concerned about the cost that is shifting to the bar.

Attorney Rynard stated that she believes the procedure changed early last year and you now needed to provide a notice to all parties. Attorney Gendron added that she believes it was a difference between the Harrisburg and Wilkes-Barre Clerk's office procedures.

Sheila Booth explained this was most likely a carryover from the Clerk's office internal procedures. If there is not a reason to do this, this can certainly be changed.

A discussion ensued regarding whether a creditor who is expecting payments at a certain time through the plan has the right to know when payments are to be suspended. Attorney Spott noted that the lack of notification may cause calls to be placed to the Trustee if they were receiving payment and then were not. Attorney Harris added that this could tie into motion for relief for adequate protection issues if payments are not being made.

Judge France stated that it would be important for a creditor to be notified that this has occurred but was unsure what a creditor could possibly state in their objection. Judge Thomas replied they might state the plan is no longer feasible and the case should either be dismissed or converted.

Attorney Updike stated she has seen the trustee object to these motions if they are filed multiple times. Attorney Gendron added that she has seen the trustee object if the motion exceeds the cap set forth in the trustee's policy. Attorney Jones confirmed that the trustee will object to the motion if it exceeds a four (4) month suspension or if it states a lump sum will be paid at the end of the plan and a set number of pays suspended.

Attorney Schalk added that his clients are asking him to object if a debtor moves to suspend conduit mortgage payments as distinguished from trustee payments on arrearages. He is receiving notification of these motions through ECF. Terry Miller added that non-ECF creditors would not receive notification of these motions.

Attorney Weiss offered the suggestion of limiting the notice of these motions to secured creditors. Attorney Gurdin disagreed with this suggestion and felt that notification should go out to everyone.

Attorney Gendron mentioned a similar issue is occurring with the Motion for Mortgage Modification. This is also listed as a 21 day passive notice to creditors on the matrix. Why do unaffected creditors need to be served?

Judge France tabled this discussion for this meeting. This issue will be addressed by the Court at their meeting next week. The input and positions expressed by the Committee during this discussion will be taken into consideration.

B. Service of notices in connection with amendments to chapter 13 plans. (Judge France)

Judge France deferred this topic to Terry Miller. He advised the Committee that he has spoken with Sheila Booth, Sue Frisch and the team leaders regarding this matter and things are improving. The initial group of cases where the attorneys were unaware of the local rule change were a problem. But now, for the most part, attorneys are doing better with service of the amended plans. There were very few questions on this topic at the recent seminars that were conducted. He has received feedback from attorneys both at the seminars and through emails commenting that if we have to serve the amended plan, why can't we serve the notice to? Right now according to the local rules, the Clerk's office is responsible for serving the notice and the attorney is to serve the amended plan. This is confusing for people. He proposed opening up the Court Hearing Scheduler program to give attorneys the opportunity to serve the amended plan and notice, if interested by self-scheduling the confirmation hearing. This could be an optional process or perhaps have a judge pilot self-scheduling confirmation hearings on amended plans.

Judge France stated that she has also had attorneys mention to her that it would be easier if they could just serve the notice and amended plan at the same time. Attorney Jones thought the recipients would be appreciative of this change since they are receiving them on different days. Judge Opel agreed that separate notices could be cumbersome for creditors and thought this would probably improve the process. Attorney Chernicoff agreed.

Input was requested from Attorney Gurdin since he was one of the attorneys who mentioned at the last meeting that due to their office setup, they are unable to mail notices the same day as they e-filer their documents. He informed the Committee that he is in the process of changing his office practices to now plan for when they need to file and serve these. His staff stays and does it so that it is all completed on the same day. The problem is mostly a mechanical issue. In his office they have a big machine that does double-sided copies, folds and staples but is only able to handle up to 16 pages. One additional page could make a substantial difference. Any notices that cannot be done by this machine require manual processing by his staff.

Attorney Jones requested that paper copies not be served on the Trustee. They receive their notifications electronically through the ECF system.

Terry Miller mentioned that Attorney Rick Bushman posted a message on the MDBBA listserv in early February with the name of a company on the West coast (BK Attorney

Services, LLC <http://www.bkattorneyservices3.com/default.htm>) that he uses to outsource his noticing and is very pleased with their services.

Attorney Updike stated that the recent change to the ECF system to allow for the filer to indicate whether a certificate of service is attached has cleared up the confusion. She thought making a change like this would merely create new confusion.

Attorney Spott added that drafting and preparing the notice to serve with the amended plan would be additional work for the attorney. Terry Miller advised that a standard form could be posted on the Court's website for the bar to use. Sue Frisch added that at this time ECF is not able to create a notice for external users to serve, like it does for the internal users.

Judge France polled the attorneys present and 5 requested no additional changes be made and 2 were in favor of delegating the noticing function to the attorneys. As a result, it was decided to keep it as is.

C. Rule 3002.1 responses to notices of payment change. (Joe Schalk)

Attorney Schalk corrected the agenda item. It should be "Rule 3002.1 responses to notices of final cure payment". He has two issues regarding this topic.

(1) New Jersey has had a local rule in place since either 2007 or 2008 that has a corresponding local form for the response (http://www.njb.uscourts.gov/sites/default/files/forms/Statement_in_Response_to_Notice_of_Final_Cure_Payment.pdf). Does the Court want to consider using it so that responses are uniform?

Attorney Gendron stated she likes the form and would recommend that it be used. Judge Opel requested Attorney Schalk email him a copy of the rule and form so that it can be reviewed.

(2) When the trustee files a Notice of Final Cure in a case where my client has had relief for 3-4 years, is it acceptable to submit the relief order as a response? The Rule requires a response to be filed but they may not know the status of the account if it has gone to foreclosure. His clients are not sure how to respond and handle these. The trustee states if response is not filed, the account can be deemed current under the Rule. How is the trustee issuing this notice?

Attorney Jones stated that Rule states the trustee must file this notice and also requires the holder of the claim to confirm whether the debtor is current post petition. It does not state they allege the debtor is current post petition.

Attorney Harris inquired if the trustee stops making payments when relief is granted. Attorney Jones replied it is a complicated process. The fact that relief is granted does not necessarily mean they are moving out of the house. Some debtors do loss mitigation or a loan modification to keep the mortgage going.

Attorney Schalk is unsure whether this has come up in New Jersey. He will be checking the wording on their form notice. A bankruptcy attorney and foreclosure attorney are not always the same and it can be difficult to obtain the status of accounts. His office has started adding a statement to their relief orders stating Rule 3002.1 is waived.

Attorney Gendron suggested the mortgagee seek concurrence from debtor's counsel and state relief was entered and property has been surrendered.

Judge Opel recognized that the discussion was getting beyond procedure. Judge France agreed and it was determined these will need to be decided on a case by case basis.

D. Motions for Sale not complying with Local Bankruptcy Rules (Judge Thomas)

Judge Thomas took a moment to inform the Bar, Court and Clerk's office that he has seen lots of motions for sale that were somehow noticed using the Clerk's office general notice that does not comply with the local rules. He had addressed this previously with Sheila Booth and informed that it was corrected; however, he is still seeing them come up for hearing. He also emphasized to the bar the importance of reviewing the rules and code when filing sale motions. A few years ago Judge Opel added detailed information to the local rules for sales which is not always being followed.

Judge France agreed and stated it would be helpful every time there is MDBBA training to have something on sales. Unfortunately the attendees may not be the ones that need it the most.

Sheila Booth advised that it was addressed and requested case numbers that this is still occurring in. Sue Frisch added that it was corrected in the ECF events and reference documents. She will run a report for the Court on motions for sale that have been filed since November and advise of any cases that have had this issue.

E. June meeting rescheduled to July 12. (Judge France)