

U.S. Bankruptcy Court for the Middle District of Pennsylvania
Attorney Advisory Committee
March 14, 2013

Minutes

Attendance:

Bar: Brenda Bishop, Thomas Capehart, Anne Fiorenza, Jim Jones, Juliet Moringiello, Mark Moulton, Lisa Rynard, Bob Spielman, Jill Spott, Tracy Updike, Henry Van Eck and Elliot Weiss

Clerk's Office: Terry Miller, Sheila Booth, Sue Frisch, Mike McHugh and Belinda Wagner

Chambers: Judge Mary France, Judge John Thomas

The meeting was convened at 3:00 pm and concluded at 4:40 pm. Judge France welcomed the members of the Committee and Clerk's Office.

I. Old Business

A. Welcome new members. (Judge France)

Judge France welcomed the seven (7) new members of the committee. At the suggestion of Judge Thomas, there are now three (3) law professors serving as ex officio members on the committee. They are Sam Bufford, Juliet Moringiello and Marie Reilly. There are also four (4) new members of the bar on the committee, replacing members whose terms expired. They are Thomas Capehart, Henry Van Eck, Mark Moulton and Bob Spielman.

B. Mortgage Modification Task Force update.

Judge France commended Judge Opel and all of the attorneys who worked on drafting the rules required to implement the Mortgage Modification Mediation Program (the "Program"). The local rules implementing the Program were adopted effective March 1, 2013. To date, two (2) motions to participate in the Program have been filed. It is too early to know the impact, but all three judges are notified when these motions are filed so that they can see how its being used. Judge France reported that only one (1) mediator has indicated he does not want to take these cases.

C. Ch. 13 Fee committee update. (Judge France)

Judge France informed the attendees that John Kelly has been working with a number of members from this committee to review the current practice for Ch. 13 fees and identify alternatives. They have met twice as a large group and decided to split into smaller groups to look at three (3) different approaches for Ch. 13 fees: (1) mandated flat fee; (2)

cafeteria style where specific fees are assigned to specific tasks; and (3) current arrangement in which either a flat fee or a minimum fee is combined with a lodestar.

The Ch. 13 Fee committee has agreed to review an additional concern Judge France has expressed regarding the 2016(b) statements in Ch. 13 cases. Her chambers has found that in many instances the form is not reflecting what is actually being charged to a client. Since most fee applications do not have a copy of the fee agreement attached for confidentiality reasons, the court relies on the 2016(b) statements.

Attorney Updike reported the committee met yesterday to flesh out an initial draft of a rule. They are in the process of identifying the basic services offered as well as more specific day-to-day processes and what goes into each component. The committee plans to recommend the 2016(b) local form be reviewed and signed by the debtor so they know what they are paying for.

Attorney Spott added the current 2016(b) form contradicts itself so the committee plans to reword it so it is clear for the debtors. The committee is discussing developing a 2016(b) form as a local form that has a checkbox that discloses either a flat fee or a minimum fee with a lodestar.

Judge Thomas commended Judge France for creating this task force. The judges look forward to the committee's report to get a sense of what is going on in the legal community.

D. MDBBA committees and committee members. (Updike)

Attorney Tracy Updike reported she has reviewed the MDBBA committees and is in the process of restructuring some of them. She will be sending emails to the members of the various committees to see if they are still interested in being on the committee. She will also be adding descriptions for each of the committees on the MDBBA website.

Judge France added the Attorney Liaison committee, under the auspices of the MDBBA, was to the supervision of the Court to reflect that the Court has involvement. It was also renamed Attorney Advisory committee. Members of the MDBBA are involved, but it is not a requirement.

E. Timely filing of LF 3015-5 Certificate in Support of Discharge. (Miller)

At the last meeting, it was reported some case administrators were notifying attorneys these forms were filed too early if it was filed before the trustee's final report. Terry Miller reported there was some confusion amongst the staff because the Clerk's office does not know the plan payments have been completed until the trustee's final report is filed. The staff have been reminded of the proper process.

F. Nunc Pro Tunc Apps for Employment in Ch. 11 Cases. (Miller)

Terry Miller stated that although there is no requirement in the Code or Rules to notice that an application is for nunc pro tunc relief, this process was implemented as part of last year's procedural noticing changes to allow for an objection to be filed. It is a passive 14 day objection notice. If no objections are filed, the application is reviewed by chambers. This issue can be discussed at the next judge's meeting if changes need to be made.

Anne Fiorenza mentioned the US Trustee has five (5) days to review applications to employ; however, in a Ch. 11 case there may be someone else interested who has an objection.

Judge Thomas added he always sets hearings on nunc pro tunc applications, but he needs to know it is filed. If the application is docketed as a standard application, it may be stamped without having a hearing on it.

Sue Frisch informed everyone that the docket event in CM/ECF prompts the filer with a question "Is this being filed nunc pro tunc?" If the filer responds yes, then additional text is added to the docket entry clarifying it is being filed nunc pro tunc and prompts for noticing. The event does not have a definition of what nunc pro tunc is, but certainly can if that would help.

The judges agreed the filers should make the determination as to whether it is nunc pro tunc and not the Clerk's office. Filers should define it either in the caption or the docket event.

G. Generic Motion Docket Event. (Miller)

Terry Miller advised that he never received a list of which motions needed to have text boxes added back to them or what other types of motion events were needed. The Clerk's office is willing to work with the bar and get feedback on specific improvements that are needed. The generic motion event has always been only made available when needed for odd filings. In the past there were some broadly named events which were sometimes used incorrectly.

Attorney Spott requested text boxes be made available for filers to show in the docket entry what specific item is being filed. Without this information it is difficult to find things on the docket. It also causes extra expenses to be incurred by having to keep opening documents and paying PACER fees to find the correct documents.

Anne Fiorenza recalled needing to file in a Ch. 11 a motion to compel the filing of monthly reports. This specific option is not available within the event but there is one for accounting.

Attorney Spott added that on two (2) occasions recently when she contacted the HelpDesk, she was told to file it under a certain event and then the court would edit the text to match the filing.

Attorney Van Eck remarked filers need to work with the Clerk's office. He had an emergency motion that needed to be filed and was instructed to file it as a first day motion and the Clerk's Office would change it.

Sue Frisch stated there have been 11 motions filed this year using the generic motion docket event. This event is made available for unusual filings and monitored to identify new motion events that may be needed. So if this is not being used for the unusual motions then new events cannot be identified. Sheila Booth added that if an event is needed, we want to make it available.

Judge Thomas mentioned he often requests case administrators to fix the docket if something is incorrect. This may or may not be because of the filer. Sheila Booth requested that she and Sue Frisch be copied on these emails so that they can see if adjustments are needed to prevent the error.

Judge France requested a process be established in the Clerk's office for handling the times when motions need to be filed occasionally and there is no option for filers to use. Terry Miller stated he will have an email address setup dedicated to these situations. He will designate someone as a point person to receive the emails. Once this is established, the address will be circulated to the MDBBA listserv and posted on the Court's website.

H. Emergency/Expedited Motion Procedures (LR 9075). (Miller)

Terry Miller stated he looked into the issues raised at the last meeting and found the procedures and LR 9075 are not always being followed. Judge France added 75% are done incorrectly. The docket event was modified to include an additional text box for the filers and the procedures will be updated to clarify the process. To address this problem and encourage filers to follow the procedures, the Emergency/Expedited Motion procedures will be circulated to the MDBBA listserv.

Judge Thomas added that he has had lawyers self schedule emergency hearings on his calendar by sending a notice out of the hearing date. The only reference to the date is inside the notice so the courtroom deputy is not aware of it because it is not on the calendar. Consideration may be given to issuing an Administrative Order identifying what specifically can be self scheduled for hearing and what cannot. Sue Frisch clarified that when the authorized self scheduled motion events are used, the hearing will get on the calendar. The problem occurs when a filer includes a hearing date in the notice but the event does not prompt them to set the matter for hearing.

II. New Business

A. New Mortgage Modification Program and Possible Impact on Case Closing. (Miller)

Terry Miller advised that he and Sheila Booth spoke with the judges at the last judge meeting about the Program and its possible impact on case closing. He requested the bar notify him if they foresee anything problematic with it that will impact the closing of cases in this program.

Attorney Updike anticipates these motions to be filed early in the case, soon after the case is filed. As such, a vast majority will not delay the closing of the case.

B. Expansion of Trustee Service of Fee Apps, Sale Notices and Local Rules 2002 & 6004 (due to requirement to reduce court's noticing costs). (Miller)

Terry Miller informed the committee there is pressure on the Clerk's office from the national level to review the notices we are issuing. Although the Court uses the Bankruptcy Noticing Center (BNC) to send notices there are still costs associated with sending notices. The Administrative Office of the US Courts has requested the Court reduce its noticing costs per case. This is not related to sequestration but rather the budgetary issues.

Judge France added that a district-by-district printout of this information was circulated and bankruptcy courts were compared with other districts. Our Court was singled out because our noticing costs are above average.

Terry Miller stated a change has already been made for the noticing of fee applications for attorneys in asset cases. Another noticing change being proposed is for 6004 notices. In 2012 these notices had 7,635 paper recipients of which 5,623 were for sales free and clear. We are still noticing these, but a change may be proposed to the local rule due to the high volume of these notices. Another area being considered is rescheduled 341 notices. The local rules state the Court is required to send a rescheduled 341 notice but this may be changing also.

Attorney Updike asked if anyone is looking into making it mandatory to be served electronically? Terry Miller replied the Electronic Bankruptcy Noticing offers methods for case participants to be electronically notified, but they need to sign-up for it. Judge Thomas offered for consideration reviewing Federal Rule 4 when considering imposing electronic service on additional parties.

Terry Miller stated there are companies available to do noticing for the bar. The Bankruptcy Noticing Center has a contract with the Courts but also does private noticing. There were also a few companies recommended on the MDBBA listserv when the noticing change went into effect for the amended plans. This topic was listed for today's meeting to get everyone thinking about this change so attorneys can prepare accordingly.

Attorney Spielman mentioned he does a lot of Ch. 13 amended plans and serves them on the matrix. He has found that half of the people listed on the matrix can get electronic notice. Is he still required to mail a paper copy to them? Sheila Booth advised if they received it electronically, then he only needs to serve the non-electronic recipients. The Notice of Electronic Filing in CM/ECF identifies who receives electronic service and who needs to be paper served. Anne Fiorenza added that the US Trustee does not want to receive paper notices in Ch. 13 cases. Sue Frisch reminded everyone that there is a register of preferred addresses for State and Federal governmental units on the Court's website and stated something can be added for the district's trustees, if needed.

C. Local Rule Changes March 1, 2013

Judge Opel was unable to attend the meeting and asked Judge Thomas to thank everyone for their comments on the last batch of local rule changes and getting back to him.

D. Next Meeting Date

The next meeting is scheduled for June 13, 2013 at 3:00 p.m. This date may be moved due to a conflict with the MDBBA conference.