

U.S. Bankruptcy Court for the Middle District of Pennsylvania
Attorney Advisory Committee
September 12, 2013

Minutes

Attendance:

Bar: Brenda Bishop, Bob Chernicoff, Anne Fiorenza, Jim Jones, Juliet Moringiello, Mark Moulton, Lisa Rynard, Bob Spielman, Ann Swartz, Henry Van Eck and Elliot Weiss

Clerk's Office: Terry Miller, Sue Frisch, Cindy Boyle and Belinda Wagner

Chambers: Judge Mary France, Judge John Thomas

The meeting was convened at 3:00 pm and concluded at 4:10 pm. Judge France welcomed the members of the Committee and Clerk's Office.

I. Old Business

A. Fee committee status report. (Judge France)

Judge France advised the fee committee had been waiting for judicial input on several issues before proceeding with this project. The judges of this Court recently held a conference call to discuss these matters.

The judges agreed there should be two fee approaches: (1) a presumed reasonable fee approach which will have clearly defined base services that are to be provided to the debtor; and (2) a lodestar approach. Both approaches will require Court approval. The fee committee will discuss using a fee application similar to what is currently in place in the US Bankruptcy Court for the Eastern District of Pennsylvania. The presumed reasonable fee approach will be accompanied by standard services to be provided for the fee. The fee committee will be proposing local rules and forms that address using these two fee approaches in Ch. 13 cases.

Judge France will reconvene the fee committee in the Fall.

B. MDBBA committees and committee members. (Updike)

Tracy Updike was not present at the meeting so Lisa Rynard provided a report. The Nominating Committee is currently soliciting nominations for Officers and positions on the Board of Directors. Nominations are to be sent to Lisa Rynard. Officers will be elected at the MDBBA Annual Meeting on October 18, 2013.

II. New Business

A. Budget outlook for next two fiscal years – impact on practitioners. (Miller)

Judge France requested Terry Miller and Anne Fiorenza provide an update to the bar with regards to budget issues they are facing and its impact on the practitioners.

Terry Miller stated the budget outlook for the next two fiscal years does not look good. Since January 2013, the Clerk's Office has lost seven staff members, five of which were case administrators. As a result, the bar may need to leave more voicemail messages for the Clerk's Office than in the past. The monthly training provided by the team leaders may be replaced with electronic learning modules prepared by the Administrative Office so that their time can be spent in other areas. The suggestion was made for consideration to be given to outsourcing the training to volunteer attorneys and staff who are knowledgeable in e-filing.

In addition to the budgetary issues, the Administrative Office's staffing formula is based on the number of cases filed. When case filings go down, the number of positions the Court is allowed to have also goes down. Last month, there was a 20% decline in filings in this Court as compared to August 2012 and an overall decline of approximately 13% year to date.

The Courts may not have a budget on October 1, 2014 because Congress has not yet approved a budget for Fiscal Year 2014. Each Court will receive six months worth of funding and be urged to use it with extreme caution until the budget is finalized. Last fiscal year the budget was not finalized until March.

There is also the risk of a government shutdown. If there is a government shutdown, the Courts have a two week window and will remain open before Clerk's Office staff need to be furloughed. The judge's chambers and their staff are funded separately from the Clerk's Office. So if there is a government shutdown, the judges are not required to furlough but may feel the effects because the Courtroom Deputy and Electronic Court Recorder Operator (ECRO) are Clerk's Staff. If those positions are furloughed, then the ability to conduct hearings on the record may be impacted unless the law clerks can run the equipment.

Terry Miller assured that the Clerk's Office will strive to provide the best customer service they can. However, if practitioners see delays or problems, he requested they contact him to see if the issue can be addressed.

Anne Fiorenza stated the US Trustee program has also been affected by staffing cuts. The US Trustee's Office is trying to deal with attrition on a regional level by consolidating functions across the region. This change has primarily impacted the trustees.

B. Individual Judge Webpages. (Thomas)

Judge Thomas reported the judges are in the process of creating individual judge webpages. The intent is for the members of the bar to know in advance the preferences and expectations of each chambers. The judges welcome input from the bar with regards to topics each one should address for identifying their procedures. Input can be provided by email or a phone call to chambers.

C. Proposed noticing changes for Amended Plan (Pre-Confirmation) and Modified Plans (Post-Confirmation). (Frisch)

Sue Frisch advised that in April of this year when Terry and Sheila met with the Judges as a quarterly judge meeting, they discussed amending Local Bankruptcy Rules 3015-2(c) and (e) to provide for the plan proponents to serve the notice as well as the amended/modified plan. For the past 5 months, the Clerk's Office has been working on modifications to CM/ECF to allow for this procedural change to be implemented.

When the amended Local Bankruptcy Rules take effect, the filing of a pre-confirmation Amended Plan will prompt the filer to self-schedule the hearing if the initial confirmation hearing notice has been issued by the Clerk's Office. The Court Hearing Scheduler (CHS) program will be used to ensure the case is self-scheduled for the proper date on the assigned judge's calendar. The filer's notice should contain the same hearing date, time and location as is set in the docket event. When a post-confirmation Modified Plan is filed, the filer will be prompted to set an objection date. The filer's notice should contain the same objection date as is set in the docket event.

In June at the MDBBA Conference, this change was discussed at the Clerk's Office session and input was gathered from the attendees on how we should proceed with the events. Two firms volunteered to assist and were setup with logins to preview the events and provide feedback. The Clerk's Office would like to have the implementation of this procedural change go as smoothly as possible. Two additional volunteers from this committee were solicited to also assist in previewing this change and providing feedback. Attorney Mark Moulton volunteered to assist. Any other members interested should notify Sue Frisch.

Sue Frisch stated this change will be implemented when the local rules are amended.

D. Mortgage Modification Mediation Program Centralized Review. (Miller)

Terry Miller reported last month the judges implemented a centralized review of mortgage modification requests. Rich Rogers, law clerk to Judge Thomas, was designated with this responsibility. He will monitor cases in which requests for mediation have been filed for the district from beginning to end.

E. Next Meeting Date.

The next meeting is scheduled for December 12, 2013 at 3:00 PM.