

**U.S. Bankruptcy Court for the Middle District of Pennsylvania**  
**Attorney Advisory Committee**  
**September 11, 2017**

**Minutes**

**Attendance:**

Bar: *Harrisburg:* Anne Fiorenza; Jim Jones; Juliet Moringello; Johanna Rehkamp; Lisa Rynard; and Tracy Updike  
*Wilkes-Barre:* Brett Freeman  
*Telephone:* John Fisher; Dan Rheam; Vince Rubino; and Ann Swartz

Clerk's Office: Seth Eisenberg; Rick Thompson; Sue Frisch; and Cindy Boyle

Chambers: Judge John Thomas; Judge Robert Opel, II; and Judge Henry Van Eck

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The meeting was convened at 3:00 pm and concluded at 4:15 pm. Judge Thomas acknowledged and thanked all members for attending the meeting.

**OLD BUSINESS:**

1. **Ch. 13 issues:**
  - (1) Proper procedure to handle disbursements refunded to the trustee by a creditor after the court grants relief from the stay (such as a mortgage lender) or the claim is paid by a third party (such as real estate taxes paid by a mortgage lender).**
  - (2) Proper procedures for debtors barred from refiling without prior court approval to obtain approval in order to file a subsequent petition. (Jim Jones)**

Jim Jones reported that he looked into the suggestion made at the last meeting for how to handle disbursements refunded to the trustee by a creditor after the court grants relief from stay or the claim is paid by a third party. The suggestion was to stop making the plan payments. This is actually part of the national model plan, so it has been incorporated into the proposed local model plan. This will be the interim solution.

Judge Thomas reported that the judges discussed procedures for handling petitions filed by barred debtors with Terry Miller and Seth Eisenberg. Seth explained there are measures in place to monitor barred debtors nationwide. When a barred debtor refiles, chambers is notified. The judges all agree that a hearing needs to be set when a barred debtor refiles. Jim Jones added the

trustee feels they have a duty to enforce a bar if one exists so they are trying to get more involved with the creditors in dealing with these situations.

**2. Model Plan discussion and appointment of a committee update (Jim Jones – Ann Swartz)**

Jim Jones reported the committee has put a lot of hours into working on the model plan and it has been a group effort. There were three phases to their discussions. First, they needed to decide whether to use the national model plan form or revise the local model plan form. The committee decided to revise the local model plan form. The second phase was incorporating the opt out provisions into the local model plan form so it is compliant with new Fed. R. Bank. Proc. 3015.1. The last phase was to review the local model plan form in its entirety and identify other changes that should be made. They took recommendations from the national plan and also addressed issues local practitioners were having with the current local model plan. The proposed local model plan contains a significant number of changes so rather than redlining the current local model plan, they will be proposing a new local model plan. The subcommittee is to provide their final comments by Friday, September 15, 2017. Additional changes, if necessary, will be made and a final proposal will be provided to the bench shortly thereafter.

Prior to this meeting, a draft of the proposed local model plan was circulated to the members of this committee. Several members provided comments and questions regarding the content of the local model plan. It was noted that the wording needs to be understandable for both attorneys and self-represented parties. A discussion also took place with regards to the font size and how it will function as a fillable form. Jim Jones will discuss these comments with the subcommittee at their meeting later this week.

**NEW BUSINESS:**

**1. New Local Rule Amendments (Judge Van Eck)**

Judge Van Eck reported everyone is working hard on getting these rule amendments ready. The discussion which had just taken place, on the proposed model plan is an example of the daily struggles taking place with the local rule amendments and the need to address concerns as they strive to meet the expectations and requirements of the new and amended rules. Once the proposed local model plan is submitted to the Court, the proposed amendments to the local rules and forms will be circulated internally to the Clerk's Office and judges for their review before they are published for public comment. Judge Van Eck anticipates having the proposed amendments published for a 30 day public comment in early October so that the Clerk's Office can get them in place on the website and implemented December 1, 2017.

**2. Response Date for Ch. 13 Trustee's Motion to Dismiss – Should a response date continue to be set for a Motion to Dismiss for an unconfirmable plan or should only a hearing date be set? Many debtors file amended plans after the response date but before the hearing date. Since a response is therefore filed, the Trustee's office**

**needs to obtain concurrence from debtor to withdraw its motion. Since the purpose of the motion is to encourage debtor to file a confirmable plan and not to dismiss the case by default, the procedure would be streamlined by removing the requirement to set a response date. This procedure would therefore track the procedure for a Motion to Dismiss for material default. (Jim Jones)**

Jim Jones explained that the Trustee would like to have a procedure similar to the Motion to Dismiss for material default, wherein, the matter is scheduled for hearing without a response deadline being set. This change would allow the debtor to file an amended plan prior to the hearing so that the Trustee can simply withdraw the motion. The judges are in favor of this change, if it can be made by the Clerk's Office, as it would allow motions to be removed from hearing lists sooner than the day of the hearing. Judge Opel requested Seth to work with the Trustee's Office to identify the types of motions to dismiss which should be changed to follow this process.

**NEXT MEETING DATE FOR 2017:**

December 4, 2017 at 3:00 pm