

U.S. Bankruptcy Court for the Middle District of Pennsylvania
Attorney Advisory Committee
November 3, 2022, at 1:00 PM

Attendance: Judge Van Eck, Judge Conway, Matt Smith, Sarah Rothermel, Terry Miller, Rick Thompson, Karen Muroski, Seth Eisenberg, David Harris, Jack Zaharopoulos, Jim Jones, Mario Hanyon, Bob Chernicoff, Dawn Cutaia, Lisa Doran

OLD BUSINESS:

1. Proposed L.B.R. 9019 Amendments (Troy Sellars & Jim Jones)
 - a. Update on amended loan modification local rules.
 - a. Jim Jones: We submitted 2 versions. The main issue is who will be responsible for providing notice to the parties. The subcommittee that Troy lead said that they could not reach a unanimous decision.
 - b. Discussion of the merits of both options.
 - c. Judges to discuss and offer thoughts at the next meeting.
2. Update on Redline Changes to Local Rule 9075-1 Expedited Hearings (Judge Van Eck)
 - a. Revised rule to require attorney to file underlying pleading and notify chambers by email of the motion for expedited consideration.
 - b. Judge Van Eck: About one third of the time people do not file the underlying motion. Judge Van Eck will send redline to the rules committee for feedback. Absent any comments received by the end of December, the Court will implement this change by the new year. (LR 9075-1 was amended effective January 1, 2023)

NEW BUSINESS:

- Terry Miller: Seth Eisenberg, Chief Deputy Clerk has been acting as the court's defacto local rules liaison. Accordingly, we would like to make him officially part of the standing Rules committee. (Having no opposition, the request was approved.)
1. Self-Help Program (Terry Miller)
 - Terry: we started the program in 2016. We have a self-help page on our public website. The number of people that have used this service is a very small percentage of our total pro se filers.. The program started with 5 volunteer attorneys . Since that time, the self-help program has be impacted by our district's declining filing rate. (only 3 participants registered for 2021, 2022 had no registrations but a handful of referrals were made via phone calls to volunteer attorneys)We wanted to reinvigorate the program by seeking

new volunteers.. Terry briefly explained the process: The *pro se* debtor, via the self-help web page, has to fill out a financial disclosure form and once they've done that, they can get matched with attys. Currently, because so few use this service, if somebody contacts us, we usually just pick up the phone and call an atty.

- Judge Van Eck: So you want president of MDBBA to help out getting some volunteers?
- Terry: Yes. A lot of the *pro ses* in self-help don't qualify for North Penn and Mid Penn because they have income caps.
- Judge Van Eck: We are not asking our bar to provide services for free. We just think that if some of these people got with an attorney, they might be more successful. The hope is people would go through the program and determine it would be better to get help
- Dawn: We do not want it to be that the court is giving a specific attorney a lead on business. Referrals should be randomized to avoid ethical conflicts and giving the appearance of court favoritism. (Terry: the *pro se* making the request doesn't know who the volunteer attorney is and referrals were made based on the attorney's availability. Harrisburg had 2 volunteer attorneys, Williamsport one, Wilkes-Barre had three. Self-Help stats have been included at the end of these minutes.)
- Judge Van Eck: The Court's interest is making sure *pro se* debtors have the best chance to succeed, even if that means they will hire an attorney. Dawn is going to communicate with Terry and Seth, re: MDBBA members who may be interested in participating in the program.
- Terry will circulate the financial questionnaire that *pro se* debtors fill out so potential volunteers can see what information they would get. (Terry emailed the financial questionnaire to Dawn after the meeting.)

2. Chapter 11 Small Business Procedures (Seth Eisenberg)

a. Updating timeframes regarding the plan and disclosure statement.

- Judge Conway: It is difficult to get the plan confirmed within 45 days of filing. We are trying to advise debtor's counsel of their obligations. The plan proponent does not have to necessarily file a disclosure statement. If you do, you will need to file either a conditional approval motion or a motion to extend time.
- Discussion of timing issues.
- Judge Van Eck: If you look at paragraph 2 of the proposed order, we are trying to address the 45-day requirement. My strong preference is for debtors to simply file motion to extend time past 45 days. Then we do not have to race. We just want, as Judge Conway said, to make sure debtors understand the deadlines. Let's circulate and get comments back within 14 days. Implementation will be once 14-day comment period expires. Seth and Jim to circulate?

3. Chapter 11, Sub Chapter V Procedures (Judge Van Eck)

- a. Updating 341 notice and status conference order to include matching claims bar dates or remove the claims bar date.

- Judge Van Eck: We went through and looked at this because of an issue we discovered with the bar date. We did not see a lot of changes that needed to be made, but we wanted to see if anybody had any thoughts.
 - Bob Chernicoff: When we submit a proposed Bar Date order we normally provide the claims bar date and the claim form, the current court form does not do that.
 - Judge Van Eck: You're right, and that's something we are uncomfortable with too. We could instead of setting a bar date, ask the debtor to file within 30 days
 - Bob Chernicoff: I like that. Let's put "debtor's counsel to file bar date within 30 days of filing the petition."
 - Judge Van Eck: Lets circulate a redline and move paragraph 2 to paragraph 1, change the bar date paragraph as reflected above, and change the service timing in paragraph 6. Let's get comments done in 14 days. New form to be implemented once 14-day period expires.
4. Local Rules Committee Updates (Jim Jones)
- Jim Jones: We have already discussed the hot issues (loan modification, expedited hearings, and pending changes effective 12/1)
5. Pending FRBP changes effective 12/1 (Seth Eisenberg)
- Jim Jones: We can probably eliminate redundant local rules.
6. Scheduling Conflicts between Harrisburg and Wilkes Barre Hearing Dates (Bob Chernicoff)
- Bob Chernicoff: I had a hearing scheduled with Judge Van Eck next month, but then I got one with Judge Conway up north.
 - Terry Miller: I do not know if there is any way to check these conflicts ahead of actual conflicted hearing date.
 - Judge Conway: I would simply move my hearing if there is a conflict that I am made aware of.
 - Judge Van Eck: We will look at it.
 - Judges will monitor for conflicts
7. Hearing Process Regarding Chapter 13 Fee Applications (Jim Jones)
- Jim Jones: We had a practitioner who asked about getting a faster hearing date. With final fee apps, could we get a hearing scheduled quicker rather than waiting for the objection deadline to run?
 - Judge Van Eck: We could probably save a week or 2 if we changed the rule to have a different notice. Let's circulate something in the next week to have a meeting with Jim and Seth and anyone else wanting input to join. Meeting to happen within 30 days.
8. Updating Zoom Appearance Procedures (Judge Van Eck)
- Judge Van Eck: As most on the committee are aware, we became one of the early adopters of teleconferencing for hearings because of how huge our area is. Remote

appearances used to be an exception. We want to go back to that. I will be changing my procedures in the next 7 days but they will not become effective until 1/1/23.

- Jim Jones: Prior to phone conferences, a lot of creditors were far away, so local counsel relayed information to the court.
- Judge Van Eck: When you are making a request to appear by Zoom, the attorney should indicate the economic issues (cost burdensome to the litigant) with coming in-person, and we will consider the request. We are not trying to make people come 100% of the time, but we are trying to have people come back to normal.
- Lisa: What do you have to do to request?
- Judge Van Eck: The first step would be to contact my courtroom deputy. My likely standard will be when the litigant you are representing wants to settle or continue a matter, then you can be remote. But if you are arguing/defending a motion, you should come to court. (It is always the Court's discretion as to whether Zoom appearance would be permitted – based on the particular circumstances)
- Seth: Let's take a look at 9074-1(a) because I think it's giving carte blanche approval to appear remotely. We may need to change that.

8. Replacing Johanna Rehkamp on the Advisory Committee (Judge Van Eck)

- Judge Van Eck: We need to replace her. Dawn, can you put something out on the listserv?
- Dawn Cutaia: We will send something out.

9. Update from the bar regarding market conditions (Judge Van Eck)

- Jack Zaharopoulos: National Chapter 13 filings are up about 27% nationally. Ours locally are up 22%.
- Terry Miller: We are seeing more 13's as compared to 7's now. We've seen a few months of increased filings (month to month over last year) but overall filings are down about 8% over 2021. But the rate of decline appears to be slowing down as 2021 year end filings was 24% below that of 2020.)
- David Harris: A lot less bankruptcy work now.
- Lisa Doran: It's slow.
- Dawn Cutaia: I'm seeing more cases. The last two years were bad. The last 3 months had more clients. December is usually slow.
- Mario Hanyon: My clients are saying it's coming. We have an uptick in foreclosure filings were up 30-35%. Our clients were preparing us for a flood a year ago. We are up about 20-25% in bankruptcy.
- Judge Van Eck: Historically, many people file after Christmas and into the early months of the new year because of tax season.

10. Judge Conway: Judge Opel is excited for his unveiling of the portrait on December 16 at the Westmoreland Country Club at the Christmas party. (Note: weather conditions on that date moved the ceremony to February 3, 2023)

FUTURE MEETING DATE(S):

Thursday, February 16 at 1:00 PM

