

U.S. Bankruptcy Court for the Middle District of Pennsylvania
Attorney Advisory Committee
November 7, 2024, at 1:00 PM

Attendance: Judge Van Eck; Judge Conway; Terry Miller; Seth Eisenberg; Joe Schalk; Jack Zaharopoulos; Mario Hanyon; Gary Imblum; Kara Gendron; Bob Chernicoff; Jill Manuel-Coughlin; Dave Harris; Lisa Doran; Jim Jones; Jill Durkin; Michael Evrard-Vescio; Karen Muroski; Rick Thompson

OLD BUSINESS:

1. Discussion Regarding Proposed Changes to the Chapter 13 Model Plan (Judge Van Eck)
 - Judge Van Eck: As discussed at the prior meeting, there was a proposal circulated by the Chapter 13 Trustee's office to amend the model plan for this district regarding the priority for payment of attorney's fees. The Court has had robust discussion regarding the changes and appreciates the feedback from the bar. The Court also appreciates the Chapter 13 Trustee's efforts to evaluate fee applications as they are submitted. Based on extensive discussions, the Court has decided not to support the amendments at this time, although the Court does appreciate how the proposal came about and everyone's input on the issue.

NEW BUSINESS:

1. Term Deadlines for Members and Selection of New Members for the Committee – Local Rule 9029-1 (Judge Van Eck)
 - Judge Van Eck: Local Rule 9029-1 establishes this committee and dictates who the members are. Aside from the judges, the United States Trustee, the Chapter 13 Trustee, and the Clerk, the committee is made up of volunteers. We appreciate the time all members contribute to the meetings. We also appreciate the representation of all constituencies – creditors' counsel, debtors' counsel, trustees, etc. The term commitment for members is three years, which has run for all current members. Between now and the end of the year, a solicitation will go out for new members. If any current members are interested in re-applying, please feel free. The Court will evaluate all applicants and ensure there is even representation. If there is a lot of interest, the Court will have to decide who is selected. These decisions may be guided by who has been on the committee for the longest. If there are new attorneys expressing interest, we may end up choosing newer attorneys so we can give everyone an opportunity to participate. If you are not re-selected, please do not take it personally.
 - Judge Conway: Procedurally, how do we solicit new members?
 - Judge Van Eck: Local Rule 9029 provides for solicitations via email from the MDBBA president who serves as the point of contact. The Court will draft the initial email, and

responses should be directed to the MDBBA president. We will afford 20-30 days to respond.

2. Discussion of Service of Motions to Extend/Impose the Automatic Stay (Kara Gendron)

- Kara Gendron: The BNC sends notice of motions to extend/impose the automatic stay and debtors' attorneys are required to serve the motion on the matrix. It would make more sense if the BNC could serve one document that included both the motion and the notice. Creditors could look at the docket for the contents of the motion. This is proposed as a cost saving measure.
- Judge Van Eck: The BNC currently serves just the notice?
- Kara Gendron: Yes, and debtors' counsel serves the motion. We used to not serve the motion, but case administrators have started asking us to serve the motion.
- Jack Zaharopoulos: These motions have a hearing within 30 days?
- Kara Gendron: Yes, but it is not a self-scheduled hearing. Our office usually files the motions the same day as the petition.
- Judge Van Eck: Seth?
- Seth Eisenberg: (frozen)
- Terry Miller: There is a bright line drawn between what the Court is responsible for noticing versus what counsel is responsible for noticing.
- Judge Conway: We require debtors' counsel to make sure the motion is served because they are asking for relief as to all creditors. The motion should be served if you're looking for affirmative relief as to all creditors.
- Bob Chernicoff: There are many motions filed where we just serve a notice.
- Kara Gendron: That's what I was thinking for these types of motions. If the BNC is already sending out the notice, it seems duplicative to send both a notice and the motion.
- Judge Conway: The notice merely states that there is a hearing. The motion states the reasons for the request. It is probably proper to do it the way it's currently being done. The typical case doesn't have a lot of creditors.
- Kara Gendron: It typically costs about \$50 to serve the motion at a time in the case before debtors' attorneys are paid their fees. We usually file the motion immediately with the petition. Could we tweak the notice so it's one document instead of two items going out?
- Bob Chernicoff: When we do a notice to refer people to the motion, they are specific notices that include more detail about the motion. The notice going out for the motion to extend doesn't say a whole lot. If a generic notice could be constructed, then I would be open to it, but otherwise, I agree with Judge Conway since there are due process concerns.
- Kara Gendron: The most common parties to object to these motions are typically mortgage companies who get immediate ECF notice of the motion. Unsecured creditors typically don't respond. They are still entitled to notice, but maybe the notice could be amended.
- Jim Jones: The motion needs to allege a change in circumstance, which the notice does not include.
- Lisa Doran: I don't think the current filing instructions are clear to tell attorneys how to properly serve these motions.

- Jill Manuel-Coughlin: Motions should be filed and served. There might not be a notice of appearance for creditors' counsel when the motion is filed.
- Bob Chernicoff: Shame on the attorney who doesn't notify the mortgage company in advance of filing a second case when there is a mortgage foreclosure pending.
- Judge Van Eck: It makes sense that the debtor's attorney should serve the motion since the debtor is seeking the benefit of the automatic stay, especially since the clock is ticking immediately. If time is of the essence, it is reasonable for the creditor to expect to get a copy of the motion, rather than just getting a generic notice that would require them to cross-reference the docket. It is also doubtful that there could be a notice that covers every possible changed circumstance. The debtor is asking for relief; therefore, the debtor should serve and provide all information to the creditor as reasonably as possible.
- Jim Jones: There is a concern with BNC expense?
- Terry Miller: There is a well-defined list of what the Clerk's Office is responsible for in terms of noticing. I'm not sure it's the Clerk's responsibility to send a copy of the motion to all parties. We could add language in the notice to look at the motion on the docket, but that wouldn't change what we send out.
- Judge Van Eck: It's a cost thing that is important to both the clerk's office and debtors' counsel. The question is really whether a motion is required to give adequate notice of the request. Judge Conway and I can discuss further. Resources are scarce these days. This is a cost sharing measure. Every year, the Court gets allocated less. Same with debtors' counsel. If the rule requires it, the Court will serve it. Otherwise, the movant should serve the motion. We will discuss the issue further.
- Kara Gendron: The rules could be a little clearer. Service is not currently specified in the local rule.
- Judge Van Eck: Maybe that is a discussion for the rules committee to determine whether there should be a reallocation of costs.
- Seth Eisenberg: Rule 9013-1 states that the movant serves the motion.
- Judge Van Eck: It makes sense to have the movant seeking the benefit of the motion serve the motion.
- Terry Miller: We could enhance the notice if requested.
- Jim Jones: Does the BNC charge per page?
- Rick Thompson: There is a per page fee with additional weight charges for larger documents.
- Judge Van Eck: We will continue discussion offline.

3. Holiday Party Announcements (Jim Jones)

- Jim Jones: The southern tier holiday party will be held on Friday, December 13 at noon in the Dauphin County Bar Association building. The northern tier holiday party will be held on Thursday, December 19 at noon in the Westmoreland Club.
- Judge Van Eck: Make sure to mark your calendars and spread the word. It is always great to see everyone.
- Jim Jones: Make sure to bring your staff as well.

Additional Notes:

1. Improvement to 341 Notice (Rick Thompson)

- Rick Thompson: We are close to resolution on improvements to 341 notices. Right now, there is a quick link that takes you to the more specific AUST page; then to direct links for the 341 meetings. Now, we have implemented a QR code for the meetings.

2. Jim Jones: The MDBBA will be covering new rules to come into effect. There are 3-4 new rules with the big one being that adversary proceedings will no longer be required for repossessed cars.

3. Kara Gendron: Mediation training will be conducted February 7, 2025.

- Terry Miller: We can reserve a room for the training in the courthouse.
- Kara Gendron: There will probably be fewer than 20 people, so no need for additional set up time.
- Terry Miller: Participants will need to bring their own laptops, etc.

4. Judge Van Eck: This is the final attorney advisory committee meeting for Terry Miller. He is retiring, effective at the end of this year and we wish him all the best.

FUTURE MEETING DATE:

Thursday, February 20, 2025 at 1:00 PM

