

U.S. Bankruptcy Court for the Middle District of Pennsylvania
Attorney Advisory Committee
August 18, 2022, at 1:00 PM

Meeting Minutes

OLD BUSINESS:

1. Proposed L.B.R. 9019 Amendments (Troy Sellars & Jim Jones)

a. Update on amended loan modification local rules (9019-3). Troy provided update. He summarized that neither of the groups (the ad hoc group or the rules subcommittee) could come to a consensus as to application of proposed rule. For example, would the rule apply after relief from stay granted. Other group member held that the proposed rule should apply as long as case is continuing. Additionally, who under this rule should be required to file the notice of mortgage modification or notice of payment change. Troy surmised that perhaps the best solution is to assign responsibility in 2 rules, which party is held responsible to docket notice of payment change, particularly after relief from stay has been granted. Court likely to have to make final determination as to rule language. Regarding mortgage modification agreements, is property part of the estate when payments are made outside the plan. While some of the subgroup participants believed there is an obligation upon the servicer to file the payment change notice, a lender's ability to timely respond is impacted by how such lenders are set up to handle the loan after stay relief was granted: Loan servicing may go from their bankruptcy department to a different department, such as a foreclosure department. Parties can't agree as to whose responsibility it should be, but the main impetus remains: SOME party has to be designated as the responsible filing party so we don't run into situation where mortgage payment has been changed but no notice of payment change filed or no amended proof of claim. Jim to get subcommittees to send their reports to this committee. Court would like to review these reports before deciding. (Lauren Moyer, wrote the rules subcommittee report, Tracy Updike wrote the ad hoc report.)

Discussion Recap:

HWV: generally, burden would fall to party who seeks to change status quo. Could argue benefitting party is debtor. If want court to weight in, would like pros and cons analysis.

JJ: once stay lifted, servicing of loan leaves the BK dept. to foreclosure dept so its hard for them to perform BK procedures.

HWV: is cost of service the "hot potato"?

Troy: no, it's a matter of making clear who has obligation to return to BK court for approvals

Mario: will be submitting joint creditors report on the rule

Accordingly, since no decision could be made until after the court reviews the 2 subcommittee reports, this item is to remain on the agenda for the next meeting.

2. Student Loan Portal (Kara Gendron)

Kara presents new proposal for court's consideration, to establish new student loan payment portal, such payments would be made outside the plan, additional Attny fee of \$1,500. STRETTO is portal that is integrated with Dept. of Education. HWV not fan of instituting a local rule if not a necessity. Debtors can pursue portal without the need of a local rule, they'd just have to document how its being treated, outside the plan or in the plan. Need for local rule not yet developed. MJC suggested Stretto provide a demo to committee at sometime in the future. Tabled for future consideration.

Kara provided PA Eastern Bankruptcy Court's materials, including local rules, standard plan provisions, forms and Stretto's PowerPoint presentation. Unsure if we are interested in replicating. Benefits seems to be streamlined process. She doesn't see any negatives because its optional.

JZ – pointed out 3 concerns. 1) 11 USC §1322(b)(1) problem. Separate classification and unfair treatment of student loans because they will get more than unsecured creditors. 2) He would object to plans getting student loan payments at higher rate. Also objects to associated fees and higher attorney fees. 3) not likely to be used. Little use in the PAED.

Solve 1322 issue by just not including it as an expense, Can be treated outside the plan.

Why go through the effort of new LR if nobody will use.

Dept of Ed has its own portal for free.

This portal faster.

HWV - maybe a bit early to consider full adoption. Has some concern. Not a big fan of local rules if we don't need them. If there is a portal an attorney wants to incorporate in a plan they can do so w/o a rule. Didn't seem to be a big issue is private practice and servicer typically quick to play on admi hold. Shares potential unfair treatment issues and raises potential conflict with the code. Not big enough problem to adopt LR. But willing to listen.

Set aside for now and wait and see.

MJC – a lot of loans still in deferment (federal). Maybe wait a year and see and talk to Stretto. Agrees with HWV. Doesn't see need at this point.

NEW BUSINESS:

1. Zoom Backup System (Rick Thompson)

a. Establishment of a backup in case of Zoom failure. Initially made at request of HWV during recent circumstance of a momentary Zoom technical failure ½ hr before hearings were to start. CMS (Cisco Meeting Server), which we are using (as demo) during this meeting will be

designated as the backup. Also is necessary as part of Court's COOP (Continuity of Operations Plan). New info under our on-line Remote Appearance Guide. By way of introduction to CMS (<http://www.pamb.uscourts.gov/remote-appearance-guide>) will be posted shortly after this meeting as well as an APB out to the MDBBA. . Rick reviewed some technical aspects of connecting to CMS. Seth explained that CMS connection instructions will be added to the current Zoom confirmation notice an attorney receives upon registering for Zoom. CMS would be used only when (as noted above) the Zoom connection initiated by the Court failed. Connection issues that an attorney has with its own internet service provider would not be covered.

Terry discussed related rationales – The periodic use of CMS supports the Court's COOP (Continuity of Operations Plan, which means the Court's responsibilities to maintain operations as normally as possible during short and long term shutdowns). At most, CMS will be substituted for ZOOM on a quarterly basis so that attorney participants stay familiar with this alternate tool. Dawn C. suggested Rick provide screenshots of sample connecting to CMS, etc.

2. New Mortgage Modification Program Local Rule (Jim Jones). See 1.a. above
3. Potential Changes to Local Rule 9075-1 Expedited Hearings (Judge Van Eck).

HWV – The current Local Rule is not explicit that the subject motion, which should be filed as an attached exhibit to the expedited hearing request, must also be filed separately after the expedited request is granted.

- a. Updating requirement to file underlying pleading and procedure regarding notifying chambers - HWV outlined the shortcoming of this local rule in which currently he addresses by including appropriate language within his order. He will be providing a Redline version to the local rules committee to include language that states the “underlying motion to the expedited request” must be filed after request granted.

4. Future Williamsport hearing dates (Seth Eisenberg). Seth announces (per MJC's request) that WMSPT hearing calendar will now be heard within the WB calendar. The WMSPT division designation will remain for cases filed in Williamsport. Cases assigned to WMSPT can now choose WB hearing dates which provides more hearing date options for WMSPT. Perhaps if caseload increase to prior historical levels, MJC could decide it necessary to hold court in WMSPT in the future. MJC also stated, should the need arise in a particular case that for the benefit of attorneys and parties, to conduct a hearing in WMSPT, he would consider it. Segway into item #5 below.

5. Update from the bar regarding market conditions (Judge Van Eck). Reference made to two recent articles available on uscourts.gov (see below):

Bob C. – commercial filings ticking up because of higher interest rates. Student loan moratoriums lifted may mean higher individual filings. But local banks more amenable to workout agreements outside of bankruptcy. Gary/Kara: Consumer side. Last few weeks fair amount of activity due to sept tax sales. Clients coming in starting to have cash flow issues. She is seeing more due to sales and credit card issues. Discussion on filing trends. Troy S. noted

increase of ch 13's. Above 2020 and 21 numbers, but not above 2019. Jack Z. also noted a slow uptick in 13's that follows the national trend. Terry gave a perspective of how lower filing rates impacts clerk's office staffing – less filings means less authorized staffing under the Court's budget.

<https://www.uscourts.gov/news/2022/08/01/bankruptcy-filings-take-sharp-drop>

<https://www.uscourts.gov/news/2022/08/09/just-facts-consumer-bankruptcy-trends-2005-2021>

FUTURE MEETING DATE(S):

Thursday, **November 3**, at 1:00 PM
