

U.S. Bankruptcy Court for the Middle District of Pennsylvania  
Attorney Advisory Committee  
August 22, 2024, at 1:00 PM

Attendance: Judge Van Eck; Judge Conway; Terry Miller; Seth Eisenberg; Troy Sellars; Jack Zaharopoulos; Mario Hanyon; Kara Gendron; David Harris; Bob Chernicoff; Jill Manuel-Coughlin; Jim Jones; Sarah Rothermel; Michael Evrard-Vescio; Karen Muroski; Rick Thompson

**OLD BUSINESS:**

1. Discussion Regarding Proposed Changes to the Chapter 13 Model Plan (Jack Zaharopoulos)
  - Jack Zaharopoulos: We have submitted written position statements to the Judges and will be waiting on a decision for the next steps.
  - Judge Conway: Jim Jones sent two proposals to me the other day. They were forwarded to Terry Miller and Seth Eisenberg. Jack, what would you want the Court to do with the proposals? Is this going out to a vote?
  - Jack Zaharopoulos: The topic was put out on the listserv.
  - Kara Gendron: There has not been any official notice yet and there will need to be a comment period. We were just submitting the positions of the subgroups in terms of whether the Court would have the authority to make the change in the first instance.
  - Jack Zaharopoulos: Our position is that the Court does have authority to make the change and the model plan should be amended accordingly.
  - Troy Sellars: Procedurally, we are thinking that the Court should determine whether to make a change and what that change should be. Then we will need to notice it.
  - Judge Van Eck: Everyone is interested in taking the Court's temperature so to speak?
  - Group agreed
  - Judge Van Eck: What is the authority for the change?
  - Jack Zaharopoulos: Our authority was cited in our position papers.
  - Judge Van Eck: I did not see any statutory authority cited. The opposition has indicated that any request to subordinate fees would be contrary to section 1326(b)(1).
  - Jack Zaharopoulos: Section 1326(b)(1) is clear that attorney fees can be paid before or at the time of payment to other creditors.
  - Judge Van Eck: The concern with the proposal is the language "after," which does not appear in section 1326(b)(1). The current plan provides for an order of priority unless otherwise specified, which would seem to indicate that we can change the order of priority.

- Kara Gendron: One of the problems with the proposal is that the debtor is supposed to write the plan. The debtor can *voluntarily* subordinate attys fees, but should not be mandated to do so by the model plan.
- Judge Van Eck: From the Court's perspective, the authority for the change is paramount. Model plans are quasi-rules which contain tacit approval from the Court. The Court needs to be careful that the plan doesn't contradict the code or the rules. We did not see a lot of discussion on authority.
- Jack Zaharopoulos: In our position statement, there is an alternative proposal to amend the local rules rather than amending the model plan.
- Kara Gendron: This issue should be handled on a case-by-case basis rather than through the model plan or the rules. If there is a problem, the first line of defense is the judges. If fees are unreasonable, they are reduced by the Court.
- Judge Van Eck: Perceived abuses with attorney's fees have been an issue for a long time. The *Busy Beaver* case is from 1994, so this isn't a novel issue. There have been times where the issue is more pronounced than others, but the Court must be diligent at all times in addressing the issue. Everyone agrees that if abusive billing is occurring, it should be addressed. The question is how to address it.
- Judge Conway: I am generally uncomfortable with the broad-brush strokes in the proposed changes to the model plan. I don't see this as a large problem. Certainly, there are a few attorneys that bill unreasonable fees. I would note that the Chapter 13 trustee only recently started to object to these fees. For the cases cited in the position statement as abusive fee practices in this district, what was the trustee's role in those cases that allowed the fees to reach those levels? We were missing context for the case examples provided and could not find the specific cases cited without more information. Can the trustee object during the confirmation process and put guard rails in the confirmed plan if it is needed?
- Jack Zaharopoulos: Is there an example?
- Judge Conway: In the six or seven examples cited in your position statement, who were the attorneys? In the vast majority of cases I see, fees are reasonable. They are approved without any problem. Wouldn't this be a confirmation issue?
- Jack Zaharopoulos: We could discuss fees in the confirmation process, but only with attorneys that bill hourly rather than no look fee filers.
- Kara Gendron: I had a case where I knew there would be lots of fees. As part of the confirmation negotiation process, I agreed that if I ever amended the plan again, I would make sure unsecured creditors got a set percentage and any attorney fees would not eat into that unsecured pool. The fee application process generally ensures that fees are only paid through the plan if the judge approves them.
- Bob Chernicoff: The Court is policing the fees and fee apps are more reasonable. Re: Kara's case, limiting fees could be inequitable. Creditors can run up fees just as much as debtors.
- Jack Zaharopoulos: In my former district, we had a model plan carveout where a certain percentage had to be paid to unsecured creditors in the case.

- Bob Chernicoff: We do try to accommodate this concern where unsecured creditors are vocal, but this is a case-by-case matter. I agree with Kara that fees are policed when fee apps are filed. *Busy Beaver* supports this.
- Judge Van Eck: I appreciate the trustee coming forward to address this perceived problem and proposing a solution. Does the UST have a position here?
- Troy Sellars: The UST has no official position. However, I wanted to highlight the alternative pro rata approach in the proposal. Counsel for the debtor are on top for the presumptively reasonable fee; thereafter, they would be paid pro rata with secured creditors. This keeps the presumptively reasonable fee at the top, and then pays pro rata from there.
- Kara Gendron: The alternative proposal is still an unfair discrimination against priority claims.
- Troy Sellars: There is not much else to be gained by further discussion from the bar. We would like to leave this to the judges.
- Judge Van Eck: I'm hearing mostly what was submitted in the written proposals, but we wanted the benefit of the live debate.
- Bob Chernicoff: When the bankruptcy code was enacted, in chapter 11 cases, we couldn't get fees paid. With amendments, the intent was to allow attorneys to get paid to incentivize bankruptcy attorney practice.
- Jim Jones: If the case tanks, the attorney had no remedy at all. Attorneys are faced with either suing debtors or refile and discharging the balance of fees from the first case. Attorneys shouldn't bear all of the risk.
- Bob Chernicoff: Jack's office is good at negotiating resolution of fee app disputes.
- Judge Van Eck: The Court is content to discuss the proposal and will consider the position statements and get everyone a decision.

#### Presumptively Reasonable Fee Amendments (Jim Jones)

- Jim Jones: There were a few subcommittees on rules for the presumptively reasonable fee amendments.
- Judge Van Eck: We had reviewed the proposal, found it reasonable, and approved it.
- Seth Eisenberg: We haven't done anything with this yet. We were waiting to see if there were other rules that would need to be amended so they could be implemented at the same time.
- Judge Van Eck: The revision to the presumptively reasonable fee was an easy yes for the Court.
- Seth Eisenberg: The amount was approved; proposed changes were not. Those will be submitted for notice and comment.
- Kara Gendron: The amounts were \$500 more for consumer and business cases; \$100 more for modifications. We also added indexing to revisit the fee every 3 years.
- Judge Van Eck: Indexing wasn't approved, but we quickly approved the increase. The numbers in the proposal had changed based on the discussion from the last attorney advisory meeting, which caused us to take some additional time to review. But the Court

is responsive to debtors and wants to review these changes quickly when they are presented.

- Jack Zaharopoulos: When do the new fees take effect?
- Judge Van Eck: We are good to make this change separately from the rest of the rule changes, but I defer to Judge Conway and the rules committee.
- Judge Conway: We are prepared to move forward.
- Terry Miller: Prior changes have been timed with rules amendments generally.
- Judge Van Eck: There is no need to hold this up until then.
- Jim Jones: There was also a new local rule proposal requiring debtors to download a new matrix every time they file something.
- Seth Eisenberg: This has been withdrawn in favor of making it a best practice.
- Terry Miller: This would be best practice since the matrix changes frequently.
- Jim Jones: There was also a notice to debtor of monthly mortgage statements. We will do nothing with this as we were not able to resolve this matter.

## **NEW BUSINESS:**

### 1. Discussion Regarding Waiver of Filing Fees in Chapter 7 Cases (Kara Gendron)

- Kara Gendron: This issue was brought up because it seemed like lots of pro se chapter 7 filers were seeking fee waivers that chapter 7 trustees thought were inappropriate. We have since gotten clarification that chapter 7 trustees are not prohibited from objecting. Sometimes the applications to waive filing fee are filed before debtor's schedules. But we are able to file motions to reconsider once schedules are filed if needed.
- Troy Sellars: Applications to waive the filing fee are being granted quickly before trustees get the opportunity to review them. If fees are waived, trustees don't get paid. There is a concern with allowing trustees to object if appropriate.
- Kara Gendron: Some of the applications don't match I&J. It seems like the Court waits 7 days to take action on the applications.
- Judge Van Eck: There has always been a 7-day waiting period. We review the fee waiver applications based on 150% of the federal poverty guidelines. We also include in our order that granting the fee waiver is without prejudice to reconsideration by the trustee if appropriate. We deny a lot of these requests because they don't meet the statutory requirements. If they meet the statutory requirements, we grant it. It doesn't seem like it would matter if we wait on that – if they are eligible now, they will be eligible regardless of how long we wait.
- Kara Gendron: We need the debtor's schedules to review the fee waiver application.
- Judge Van Eck: 7 days is a courtesy to allow the trustee to review it. We would be open to extending this time, if warranted.
- Troy Sellars: I don't have a magic date in mind – we can discuss this.
- Kara Gendron: I believe there was a discussion and we had agreed on 7 days.
- Terry Miller: There is no statutory or rule requirement setting a specific response deadline.
- Seth Eisenberg: If we wait longer than 7 days, there would be concern with running into other deadlines.

- Kara Gendron: It makes sense to keep the waiting period at 7 days and trustees can ask for reconsideration if needed.
- Terry Miller: Over the past 12 months through August 12, 2024, there were 105 total applications to waive filing fee; 88 were granted; 14 were denied; and 3 were dismissed.
- Judge Van Eck: If we see incomplete information or if the schedules do not match the application, we schedule a hearing. If there is no appearance, the applications are denied.

2. Pay.gov Payment Changes (Terry Miller)

- Terry Miller: Pay.gov made a change for fraud prevention reasons. Under the change, the Court could not accept payments via credit card for less than \$5.01. Pay.gov payments for amount below this threshold would be lost, most of which would be for copy fees via PACER (at 50 cents per page copied). We contacted Pay.gov and got reinstatement so that we can accept credit card payments again with the 50 cent threshold. Security and internal control requirements dictated that the Court stop taking cash at our intake counter; e.g., if someone requests a copy of a discharge for example, we would not charge them the 10 cent over-the-counter copy fee.
- Judge Van Eck: So the concern has been largely eliminated.
- Seth Eisenberg: We got the waiver, but it has not been implemented yet. The \$5.01 threshold is still in effect for now.
- Terry Miller: There are no issues if paying more than \$5.01 in fees.

3. Update to Mediation Training (Kara Gendron)

- Kara Gendron: I emailed with Seth Eisenberg about pairing with the district court on mediation. The district court had limited capacity. There were a good number of bankruptcy attorneys interested in the program. We had discussed getting a few in with district court and the rest with the MDBBA educational fund.
- Terry Miller: You could use the training room in the Harrisburg courthouse if there is interest. That room could likely fit 15-20 people? There may be space in Wilkes Barre as well.
- Jack Zaharopoulos: Has anyone found a mediation trainer?
- Jill Manuel-Coughlin: I had a case where Judge Opel was the mediator and he did a great job.
- Kara Gendron: It is still beneficial for attorneys to have mediation skills.
- Seth Eisenberg: I wouldn't wait for district court to take action.
- Judge Van Eck: A crop of new or re-trained mediators would be welcome.

**FUTURE MEETING DATE:**

Thursday, November 7, 2024 at 1:00 PM

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