

U.S. Bankruptcy Court for the Middle District of Pennsylvania
Attorney Advisory Committee
November 16, 2023, at 1:00 PM

Attendance: Judge Van Eck; Judge Conway; Terry Miller; Seth Eisenberg; Troy Sellars; Jack Zaharopoulos; Gary Imblum; Kara Gendron; David Harris; Jill Manuel-Coughlin; Mario Hanyon; Lisa Doran; Jim Jones; Jill Durkin; Leigh Nazzario; Karen Muroski; Rick Thompson

OLD BUSINESS: N/A

NEW BUSINESS:

1. Updating the Certified Mediator List for the Court (Judge Van Eck)
 - Judge Van Eck: There is a need to update the certified mediator list since some practitioners on the list are no longer practicing. Sarah Rothermel will email current members and ask them to either reaffirm their interest in being on the list or request to be removed. We will give around 30 days to respond. If no response is received, we will have to assume that the mediator is no longer interested in participating in the program. Once the responses are received, will have the updated list. Then we will evaluate whether there are sufficient mediators and if the court would like to solicit more volunteers. If we do not have enough, the court may reach out to the MDBBA to ask if they can solicit more mediators.
 - Terry Miller: As we get busier, it will be a good thing to have an updated list.
 - Judge Conway: Connie has begun the process of updating the list. Sarah can reach out to Connie to start the process.
 - Jim Jones: If we need more mediators, we will likely need an instructor as well.
 - Kara Gendron: Professor Welsh, who used to teach our mediation sessions, moved to Texas to teach. However, Kara knows some mediators through NACBA who may be able to travel to the Middle District. It would be nice to offer a program to brush up skills for current mediators and new certifications could be obtained for interested parties.
 - Judge Van Eck: Pete Welsh could help too. The district court has a good mediation program. Anyone who is interested in joining the certified mediator list can reach out to Sarah Rothermel.

2. Attorney Mentorship Program (Judge Conway)

- Judge Conway: Had a practitioner who has had some problems request a mentor. Brought up the topic to solicit thoughts/interest in starting this program.
- Troy Sellars: The UST's Office has done pro hac mentorships with volunteers before. These have been loose arrangements. The UST's Office could offer mentorship for any specific case. Troy likes the idea of putting a program together and may work with the MDBBA/Jill Durkin. Troy will reach out to Jill to see if the MDBBA is interested in helping and will follow up with Judge Conway.
- Judge Van Eck: The court would like there to be a process in place so the court knows how to initiate a mentorship role if needed. Any willingness to participate would be appreciated.
- Troy Sellars: Troy can follow up on the topic next month.

3. Self-Help Program Update (Terry Miller)

- Terry Miller: There is a new notice being sent to pro se debtors after they file to alert them to the self-help program. Dawn has been the court's lead contact for the self-help program. The new notice was prompted as a result of a recent hearing with pro se debtor trying to save their case from dismissal. Their case was dismissed, but the self-help program may have helped her. The court was hopeful that people would reach out before they file, and was not sure whether pro se filers knew that they could reach out regarding the self-help program after they file. Hopefully the new notice will let them know that the program is still available after they file. About 5.5% of the court's cases are pro se debtors. As filings increase, the program will hopefully help pro se filers get the help they need.
- Jack Zaharopoulos: The Chapter 13 Trustee's Office likes the program because it is easy to use. We often refer pro se debtors to the self-help program at 341 meetings. We also offer a link on our website to the program as well.
- Terry Miller: Lots of courts have these programs that have been successful. Our program has been available for several years.
- Troy Sellars: Is the notice live now?
- Terry Miller: Yes, the notice is being sent out now. The notice is not docketed in pro se cases – it is just mailed.
- Judge Van Eck: When did the notice go live?
- Terry Miller: We started sending the notices about a week ago. We have asked Dawn to see if she notices an increase in referrals.
- Judge Van Eck: We will follow up to see if this notice is helping.
- Jack Zaharopoulos: There are so few pro se plans have been confirmed/completed.
- Troy Sellars: US Trustee's Office files motions to dismiss approximately once per week for pro se debtors who have not filed their creditor matrix.

4. 341 Meetings and Hearings in Wilkes-Barre (Lisa Doran)
 - Lisa Doran: We have noticed a conflict in scheduling. Judge Conway had a Chapter 13 confirmation hearing day today and 341 meetings for Chapter 7 cases were scheduled at the same time.
 - Troy Sellars: We used to divide 341 locations by zip code, but now we use a tier system. There are four northern and four southern tier trustees. Sometimes, meetings get double booked. We have started the process to avoid conflicts in future.
 - Terry Miller: The clerk's office notices 341 meetings. 341 notices are issued as a routine matter and are separate from the process of scheduling hearings. The clerk's office could issue rescheduling notices if needed.
 - Troy Sellars: We are trying to avoid conflicts to the extent possible.
 - Judge Conway: We would prefer if 341 meetings for Chapter 7 case are not scheduled on hearing dates. We did not know about the conflict.
 - Troy Sellars: There has been a learning curve with the scheduling process. We do not want all practitioners having 341 meetings on the same date at the same time.
 - Jack Zaharopoulos: Our office kept same 341 meeting schedule as prior Chapter 13 Trustee. Northern tier 341 meetings are held on Monday and southern tier 341 meetings are held on Thursday. We have not noticed an issue with conflicts.
 - Jill Durkin: There are 9 trustees and 2 judges that have hearings on Tuesday, Wednesday, and Thursday. We were asked to add a few dates with zoom hearings, so some meetings ended up on Thursdays. We will have to check court calendars.
 - Troy Sellars: The northern tier only gets 40 days now due to the remote nature of 341 meetings. (Northern tier used to get 60 days.) Southern tier dates have remained at 40 days, so no days were lost like they were with the northern tier. We will continue to work on the scheduling concerns and appreciate practitioners letting the office know of conflicts.
 - Jack Zaharopoulos: We are always happy to accommodate scheduling conflicts with hearings dates.
5. Non-Standard provisions in Section 9 of Chapter 13 Plans (Jill Manuel-Coughlin)
 - Jill Manuel-Coughlin: We have been seeing more information in section 9 in the middle district of PA, but not the western or the eastern districts. We are wondering if the model plan needs modified in the middle district. The additional language in these plans is often not applicable to the specific case and can be a problem. Judge Frank, under *Espinosa*, used to schedule hearings at 1:00 p.m. for plans with items in section 9. The model plans for the eastern and western districts have some of the extra provisions baked in. Debtors' counsel should be able to include the provisions, but we would like to see some standardization.
 - David Harris: We should not eliminate section 9 in its entirety. Debtors need to use it sometimes to accommodate creditors. We should leave section 9 alone, but review its content on a case-by-case basis.
 - Jim Jones: Would you prefer all nonstandard provisions be removed?

- Jill Manuel-Coughlin: We would like debtors' counsel to include provisions only when applicable to the plan. In other words, we should keep section 9, but use it appropriately.
- Gary Imblum: I use section 9 for anything out of the ordinary.
- Judge Van Eck: This discussion has come up in court before in the context of creditor objections to the plan. If creditors do not like certain provisions, they should object to the plans. It is incumbent on the affected parties to object. The Bankruptcy Rules require that the last section of the plan be reserved for nonstandard provisions so that it is easier for creditors to identify. Therefore, we cannot eliminate section 9. However, the Chapter 13 Trustee should be aware of these issues.
- Jack Zaharopoulos: It is more work for everyone if nonstandard provisions that are mostly boilerplate are included in section 9. The issue should be brought by objection to confirmation. Creditors should know the judge and their thoughts on the nonstandard provisions.
- Judge Van Eck: The court was unaware that other judges have specially scheduled matters.
- Kara Gendron: I do not believe that this district is an outlier. Special provisions are regularly used in other districts. Some plans require more complicated addendums.
- Judge Van Eck: Section 9 should be addressed on a case-by-case basis. There was a discussion and concern among committee members when the model plan was created that section 9 could swallow the rest of the plan by including more provisions than the model plan. The court does not believe that this is currently happening, but the court and practitioners should remain mindful of this concern.
- Jim Jones: Are the plans in the eastern or western districts more complicated?
- Jill Manuel-Coughlin: Plans are not more complicated in any of the districts. Judge Frank retired, but he held specially-scheduled hearings for plans with content in section 9.
- Kara Gendron: Judge Frank has retired and no other judges are specially scheduling hearings in this way. If practitioners are abusing section 9, affected parties should raise an objection.
- Judge Van Eck: Structuring the model plan was difficult and carefully balanced. We should be hesitant to rework the plan. Remedies are built into the confirmation process in the form of an objection. Parties should protect their clients' interests.
- Judge Conway: I am seeing more boilerplate nonstandard provisions that are becoming a problem. Parties should take a look at *In re Mank*, 2020 WL 1228671 and *In re Parkman*, 589 BR 567. Practitioners cannot use section 9 to change the model plan or violate the bankruptcy rules. *Mank* stands for the proposition that including non-applicable nonstandard provisions renders plans unconfirmable.

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

- Judge Van Eck: What's going on with the market? The court has noticed an uptick in filings.

- Jack Zaharopoulos: Chapter 13s have seen a 33% increase over last year. Our office saw a spike in September due to tax sales. We averaged about 125 Chapter 13 cases filed per month. Filings are certainly going up.
- Judge Van Eck: Consumer credit card debt is at a decade high. Chapter 11 cases have increased for sure. Sub V cases have taken over.
- Troy Sellars: Regionally, we are 56th in the nation for sub V cases. New Jersey is 5th in the nation and the middle district of Florida is 1st. We are getting sub V cases confirmed and resolved timely. Numbers for 2023 exceed 2022. Consumer credit card debt is high and car delinquencies are high.
- Judge Van Eck: Consumers tend to be hesitant to file around Christmas, but we will likely see an uptick early next year.
- Seth Eisenberg: We have had almost twice as many Chapter 11 filings as last year. Overall case filings (all chapters) have increased by 16%.
- Terry Miller: Every month this year saw an increase over the prior year for all chapters.
- Mario Hanyon: No notice of holds or pauses on foreclosures, but is seeing more loan modifications. Creditors are more amenable to work-outs generally. Seeing business as usual for creditors
- Kara Gendron: Business has been busier.
- Troy Sellars: Commercial lending restrictions have tightened, so it is difficult to refinance debts. We will likely see more single asset real estate cases.
- Judge Van Eck: Single asset real estate cases are difficult. If no refinancing is available, businesses are in trouble.

FUTURE MEETING DATE:

Thursday, February 15, 2024 at 1:00 PM

