

## Minutes of Lawyers Advisory Committee Meeting

**Date of Meeting:** January 28, 2014

**Location of Meeting:** Steakhouse 85  
85 Church Street  
New Brunswick, NJ 08901

**Members in Attendance:** Honorable Gloria M. Burns, Chief Judge, Honorable Katherine C. Ferguson, Mark Hall, Committee Chair, William Mackin, Committee Vice-Chair, Martha Hildabrandt, Stacey L. Meisel, Al Russo, David G. Beslow, Brian C. Nicholas, Michael Viscount, Jeannie Naughton, Carrie Boyle, Shoshana Schiff (new liaison), Catherine E. Youngman (new member), and Ramanjit K. Chawla.

**Call to Order, Approval of Minutes and Welcome to New Member and Liaison** - Chair Mark Hall called the meeting to order and asked for approval of the minutes from the September 17, 2013 meeting. A motion to approve was made and seconded. The motion to approve the minutes was unanimously approved. Chair Mark Hall welcomed new member, Catherine Youngman and the new liaison to the District Court, Shoshana Schiff.

**Adoption of New Method for Approving LAC Meeting Minutes.** A motion was made and seconded to permit approval of LAC Meeting Minutes by 14 day negative notice through email distribution to LAC members. The motion was unanimously approved.

**Chapter 11 Subcommittee Report** - Michael Viscount, Subcommittee Chair, reported that the Form of Combined Individual Ch. 11 Plan and Disclosure Statement was ready for approval pending comments from the Board of Judges (the "BOJ"). Chief Judge Burns thanked Mr. Viscount and the Subcommittee for all of their hard work in preparing the form and noted that the BOJ approved approximately a half dozen revisions to the Form. A motion was made and seconded to allow the Form of Combined Individual Ch. 11 Plan and Disclosure Statement to be approved by 14 day negative notice following inclusion of the BOJ's revisions. The motion was unanimously approved.

The Subcommittee reported that its draft of a Local Bankruptcy Rule implementing use of the Form of Combined Individual Ch. 11 Plan and Disclosure Statement was also ready for approval. A motion was made and seconded to approve the adoption of the proposed Local Rule. The motion was unanimously approved. It will be referred to the Local Bankruptcy Rules Revision Committee for incorporation into their comprehensive revision of the Local Bankruptcy Rules.

The Subcommittee recommended revising the current Form Chapter 11 Plan and Disclosure Statement to conform to the 2005 amendments to 11 U.S.C. § 1129(a)(9)(C) relating to the timing of priority tax claim payments. A motion was made and seconded to have these revisions made for review and approval by the LAC through email negative notice procedure. The motion was unanimously approved.

The Subcommittee also noted that it is considering reviewing the current Form Chapter 11 Plan and Disclosure Statement for internal language consistency and potential additional revisions and may address this matter in future meetings.

**Chapter 13 Subcommittee Report** - Al Russo, Subcommittee Chair, reported that a survey had been widely distributed to practitioners to determine if a no-look loan modification fee was desirable and, if so, to determine the appropriate amount of such a no-look fee and the services to be included by practitioners. Al provided the Committee with a preliminary report capturing the 116 responses to the survey and noting that the Subcommittee will continue to solicit information and data regarding the no-look fee and evaluate additional responses. Recommendations will be made in the future based on the Subcommittee's further review and discussion of the survey results.

**Local Rules Subcommittee Report** - Chair Mark Hall noted that no report was submitted since the Subcommittee was currently without a chairman after Henry Karwowski's departure from the LAC and that the Subcommittee had not since been active. It was noted that the Local Rules Subcommittee needs to be reconstituted, especially since Judge Ferguson reported that the Local Bankruptcy Rules Revision Committee would soon complete its comprehensive revision of the Local Bankruptcy Rules and there would be a need for the LAC to participate in review of the suggested revisions as well as to provide ongoing review of Local Rules thereafter. Mark Hall invited members interested in taking over the chair of this Subcommittee to communicate with him and will speak to new member Catherine Youngman about her potential interest in doing so. Jeanne Naughton expressed desire to be a member of this Subcommittee when reconstituted.<sup>1</sup>

**Legislative Subcommittee Report** - Brian Nicholas, Subcommittee Chair, reported that the Subcommittee had concluded that the LAC was not suited to provide a response to the proposed National Rule changes due to the inability of the Subcommittee to speak with a unified voice arising from the disparity of practice interests of Subcommittee members. Judge Ferguson noted that a unified Subcommittee voice was not required and encouraged the submission of individual's comments. Chief Judge Burns indicated that James Waldron, Clerk of the Bankruptcy Court, urged New Jersey practitioners to voice comments prior to the February 15, 2014 deadline. There was discussion of methods to increase comments from New Jersey practitioners including having Dan Stolz send out an email to the NJSBA's distribution list with the link to the National Rules website to encourage comments and to identify the deadline for doing so, as well as placing handouts and notices in trustee meeting rooms for the same purpose. Al Russo volunteered to follow up with Dan Stolz to make the request to email the NJSBA's distribution list. The link to the proposed amendments is:

<http://www.uscourts.gov/RulesAndPolicies/rules/proposed-amendments.aspx>

**Board of Judges Update** - Chief Judge Burns reported that the BOJ was happy with the proposed Form of Combined Individual Ch. 11 Plan and Disclosure Statement and had limited comments for revision.

Chief Judge Burns further reported that Judge Wizmur will be retiring in May 2014 and the 3<sup>rd</sup> Circuit is in the process of selecting her successor.

Additionally, Chief Judge Burns noted that the deadline for applications to be a member of the local board of Bankruptcy Mediators is January 31, 2014. To date, approximately 140 applications have

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<sup>1</sup> Immediately following the meeting, Catherine Youngman volunteered to serve as the new Chair of the Local Rules Subcommittee.

been received. Selection of mediators from the applicants will thereafter take place with the expectation that the final list will consist of approximately 40 mediators.

**Rules Committee Update** - Judge Ferguson reported that the Committee's work proceeds apace and that it is nearing completion. The Committee will begin disseminating completed rules in small batches to the Judges to make their task of reviewing proposed new and revised local rules easier.

**Status Report on Website Update** - Stacey Meisel, Subcommittee Chair, noted that posting LAC meeting minutes on the Court website will be easier with the Committee's adoption earlier in the evening of the email negative notice procedure for approval of the meeting minutes.

Further, Jeanne Naughton reported that the loss mitigation link on the website had been streamlined to facilitate easier access.

Stacey Meisel and subcommittee member, David Beslow, indicated that there are several issues requiring further consideration in selecting one or more methods to conduct electronic communication from the LAC to practitioners and in accepting feedback from practitioners to the LAC through social media including privacy issues, advertisement concerns, inappropriate comments, message flooding, hijacking of discussion threads, data corruption, moderation and data base intrusions. These issues were discussed with regard to Facebook, Twitter, and Linked-In with the conclusion that more review and feedback from practitioners is required. David recommended that the Bench Bar Conference be used to solicit interest from practitioners in certain areas of information (e.g. Chapter 11 news, Chapter 13 news, etc.). The Subcommittee will also reach out to Mo Huang for comment.

**Clerk's Report** - Jeanne Naughton, reporting for James Waldron, indicated that the filing of chapter 7 and 13 cases continues to decline while chapter 11 filings are up approximately 3%. Jeanne also reported that the Clerk's Office has an approved budget through September 2014.

**Liaisons' Reports:**

A. **District Court** - Shoshana Schiff reported that the District Court LAC met recently. During that meeting, Shoshana requested that the U.S. Attorney's office provide her with a status update on the prosecution of bankruptcy crimes to report back to the Bankruptcy Court LAC. There was also discussion by the District Court LAC about the various District Court Judges' procedures and policies. The District Court Judges want practitioners to consult the Allyn Lite book (New Jersey Federal Practice Rules) for each Judge's preferences and if there are topics not included in the Lite book, the Judges encourage the LAC to recommend ones that would be helpful for practitioners.

B. **U.S. Trustee** - Martha Hildebrandt reported that the recent U.S. Trustee fee guideline seminar was a huge success and that the ongoing process of internal consolidation was working well.

C. **IRS** - Wendy Gardner was not present. Al Russo reported that beginning in April 2014 there will be a transition by which the U.S. Attorney's office will be representing the IRS in all bankruptcy matters.

D. **N.J. Attorney General** - Ramanjit Chawla reported that the Attorney General's office continues to be able to function well to address all bankruptcy matters even with a limited staff and invited practitioners to reach out to her office with any questions or concerns in any cases.

E. **N.J. State Bar** - Jerry Poslusny was not present. Chief Judge Burns reported that the planning for the Bench Bar conference is ongoing and that at her request the Third Circuit Conference, scheduled for the same week as our Bench Bar Conference, had graciously moved all bankruptcy related discussions to Wednesday and Thursday to allow the New Jersey Judges and practitioners to attend our Bench Bar conference on that Friday.

**Old Business** - Chair Mark Hall noted that the National Rules revision comment deadline is February 15, 2014.

**New Business** – Several new business items were on the Agenda but none were raised at the meeting considering the breadth and length of topics discussed. New matter to either be addressed by Subcommittees prior to the next meeting and/or at the next meeting.

**LAC Bylaws** - A new Bylaws Subcommittee was formed to be chaired by Carrie Boyle with Shoshana Schiff, Jeanne Naughton and Brian Nicholas serving as members. The subcommittee will review and update the LAC's Bylaws.

**Motion to Adjourn.** A motion to adjourn was made and seconded. The motion was unanimously approved and the meeting was adjourned.

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