

Minutes of Lawyers Advisory Committee Meeting

Date of Meeting: September 11, 2014

Location of Meeting: Forsgate Country Club
Monroe Township, NJ

Members in Attendance: Honorable Gloria M. Burns, Chief Judge, Honorable Kathryn C. Ferguson, Mark Hall, Chair, Jeanne Naughton, Carrie Boyle, Ramanjit K. Chawla, Martha Hildebrandt, Brian Nicholas, Jerry Poslusny, Shoshana Schiff, Stacey Meisel, Michael Viscount, Ginny Fortunato, David Beslow, and Anthony LaBruna. Special Guest attendee: Mo Wong, from the Bankruptcy Clerk's Office.

1. Welcome and Opening Remarks: Chair Mark Hall welcomed all members to the meeting and reported approval of the 6/11/14 Meeting Minutes with minor corrections by way of the negative notice procedure. Chief Judge Burns provided opening remarks to welcome and thank everyone for attending.

2. Chapter 11 Subcommittee Report: Michael Viscount, Chapter 11 Subcommittee chair, raised two issues for discussion: (1) should the D.N.J. follow the model set by the N.D. Cal. Bankr. Court and include both general and detailed Instructions to better utilize our form Small Business and Individual Combined Chapter 11 Plan/DS; and (2) should the D.N.J. adopt a local rule or another mechanism providing that a debtor's satisfactory submission of the Small Business Combined Chapter 11 Plan/DS results in approval of the disclosure portions, in accordance with Section 1125(f)(2), allowing for immediate scheduling of a confirmation hearing? The general discussion considered whether there are timing traps created by using the form Small Business and Individual Combined Chapter 11 Plan/DS, whether these traps were scheduling problems and potential solutions including investigating the uniformity of practices and orders among the Bankruptcy Judges, revising the current forms of order on the bankruptcy court website, creating a set of instructions or guidelines for use by practitioners, and educating practitioners and the clerk's office about the timing requirements for conditional approval and confirmation hearing. Judge Burns will address the issues at the next Board of Judges meeting and will thereafter contact Mark Hall and Michael Viscount to advise as to whether the Chapter 11 Subcommittee should begin work on revising forms (including, but not limited to a standard form order conditionally approving the disclosure statement in the context of the combined chapter 11 plan/DS) or creating instructions and guidelines.

3. Chapter 13 Subcommittee: Brian Nicholas, reporting for Al Russo, Chapter 13 Subcommittee chair, spoke about the goals and status of the proposed national model form Chapter 13 Plan. There are significant changes that impact practice. The National Committee is seeking feedback. The Subcommittee will devise a game plan for disseminating the plan to local practitioners to advise them of the need to review the plan and provide specific comments and feedback. It was suggested that the matter should be discussed at upcoming Bankruptcy Inn of Court meetings, that notices should be coordinated through the chapter 13 trustee offices, and

that flyers and blast emails might also be used to promote the need for review and comment and the deadline for doing so. The deadline for comments has been extended to February 15, 2015.

4. Legislative Subcommittee Report: Brian Nicholas, Legislative Subcommittee chair, reported that the adoption of a proposed National form chapter 13 plan has been delayed for at least 2 years to allow further discussion about its provisions, as noted in his report for Al Russo for the Chapter 13 Subcommittee and also discussed the status of proposed revisions to the National Bankruptcy Rules.

5. Local Rules Subcommittee Report: Catherine Youngman, Local Rules Subcommittee chair was not in attendance. Committee Chair Mark Hall noted that the Subcommittee was still discussing the desirability of adopting a potential new Local Rule similar to Delaware Bankruptcy Court's Rule 9010-1(d), allowing counsel 30 days to apply for retention approval. The Subcommittee was also still discussing the desirability of establishing the minimum level of services that should be included in the flat fee representation of a consumer chapter 7 debtor and the appropriate method for doing so, whether by local rule similar to chapter 13 practice in D.N.J. LBR 2016-1(j) or by local guidelines. Bill Mackin had found a recent Ninth Circuit BAP decision (Anthony J. DeLuca v. Wayne A. Seare), related to these issues. The case had been distributed for review by all LAC Members, but Mark Hall noted that there might not have been enough time for review of the case prior to the meeting. Discussion on all topics was tabled until the next meeting.

6. Bylaws Subcommittee: Carrie Boyle, Bylaws Subcommittee chair, reported the adoption of the Committee's revised Bylaws and presented the final approved form of the revised Bylaws. They will be posted to the Bankruptcy Court Website as well as the LAC's LinkedIn page. The revised Bylaws will also be transmitted to the Board of Judges.

7. Website/Social Media Subcommittee: Stacey Meisel, Website Subcommittee chair, reported that she and Mo Wong were taking the lead on a number of issues related to the LAC's LinkedIn page. The most recent version of the mandatory mediation order has been posted to the page. The group is still closed for the time being so that its functionality may be tested before being opened up to practitioners, but updates can now be sent out and questions submitted.

8. Newsletter Subcommittee: Carrie Boyle, Newsletter Subcommittee Chair, reported ongoing efforts to produce a Committee Newsletter and welcomed topics for inclusion.

9. Board of Judges Update: Chief Judge Burns reported that the mandatory mediation program is in place, the mediation forms are in final format, and the first cases are starting to come in. Judge Burns solicited input from the bar about the program's implementation and will discuss such feedback with the Board of Judges. Judge Burns also reported that the loss mitigation program is operational again.

10. Local Rules Revision Committee Update: Judge Ferguson reported that a “Sweeper” or clean-up committee is now reviewing all revised local rules for grammar, uniformity, internal consistency and consistency with other applicable rules and forms before forwarding them to the Board of Judges for consideration and review. The revised local rules have been incrementally submitted to the Board of Judges for review as they leave the Sweeper Committee and it is anticipated that all revised local rules will be submitted to the Board of Judges for consideration by December 2014. After all of the draft Rules have been approved by the Board of Judges, the next phase of the implementation begins, including submission to the District Court and a public comment period. Judge Ferguson anticipated that discussion should be conducted during next year’s Bench-Bar conference and that the revised Local rules could be submitted to the District Court by June 2015.

11. Clerk’s Office Report: Jeanne Naughton and Mo Wong noted that bankruptcy filings continue to decline compared to last year, but as of yet, the decline had not required any further staffing cuts, although cutbacks in recent years has reduced staff by 50%. They also reported on implementation of the Electronic Self-Represented project.

12. Liaison Reports:

- a. **District Court:** No report.
- b. **US Trustee:** Martha Hildebrandt reported a paralegal position opening in the US Trustee’s office.
- c. **IRS:** Chair Mark Hall introduced Anthony LaBruna, Assistant US Attorney, the new representative to the LAC for the IRS. Mr. LaBruna reported that only U.S. Attorneys may now represent the IRS in bankruptcy court as opposed to the IRS Special Assistants that used to represent the IRS in bankruptcy court.
- d. **New Jersey Attorney General:** Ramanjit K. Chawla reported that her office continues to successfully handle the bankruptcy matters and invited direct contact with her or someone in her office to discuss all such matters. To that end, Ms. Chawla distributed a list of professionals within her office with contact information for each to aid in bankruptcy cases.
- e. **New Jersey State Bar:** Jerry Poslusny reported that the N.J.S.B.A. Fall Dinner would take place on November 24, 2014 to welcome new Bankruptcy Judge Andrew Altenburg and to make a presentation to Roberta DeAngelis, the outgoing US Trustee for Region 3. Jamie Finberg is coordinating the 2015 Bench Bar Conference, scheduled to take place on May 1, 2015, and is holding a planning meeting in October.

13. Old Business:

- a. **Proper Subcommittee assignments were confirmed.** With members' preferences and current needs of the LAC considered, the newly reconstituted Subcommittees are as follows:

Chapter 11 – (1) Michael Viscount, Subcommittee Chair, (2) Martha Hildebrandt/Robert Schneider, (3) Mark Hall, (4) David Beslow, (5) Jerry Poslusny, and (5) Louis Modugno

Chapter 13 – (1) Al Russo, Subcommittee Chair, (2) Ramanjit Chawla, (3) David Beslow, (4) Ginny Fortunato, (5) Andy Finberg, (6) Brian Nicholas, and (7) Carrie Boyle

Local Rules – (1) Cathy Youngman, Subcommittee Chair, (2) Jeanne Naughton, (3) Martha Hildebrandt, (4) Mark Hall, and (5) Bill Mackin

Legislative – (1) Brian Nicholas, Subcommittee Chair, (2) Al Russo, and (3) David Beslow

Website – (1) Stacey Meisel, Subcommittee Chair, (2) Shoshanna Schiff, and (3) Mo Wong

Newsletter – (1) Carrie Boyle, Subcommittee Chair, and (2) Brian Nicholas

Bylaws – (1) Carrie Boyle, Subcommittee Chair, (2) Jeanne Naughton, and (3) Shoshanna Schiff (**disbanding now that Bylaws have been rewritten and approved**)

- b. **Local Rules Format** – With thanks to Mo Wong, our Local Rules now contain a hyperlinked table of contents, increasing user-friendliness for practitioners.

14. New Business:

Forms on Website. Mo Wong will investigate the Clerk's Office ability to make forms on the website fillable forms. Mo Wong requested a list of the top ten (10) forms to make into Microsoft Word documents.

Notice re: Fee – A NJ practitioner asked whether there was a way to disable the automatic Bankruptcy Court notice of outstanding fees in a case in which an application to waive the filing fee has been filed. There does not appear to be a

way disable such notice, although Mo Wong said he would look into this issue further.

Removal From ECF Notices – Mike Viscount asked if there was a method for removing a party from the ECF notices in cases in which they were no longer a participant. There does not appear to be a way to halt ECF notices in such a case, although Mo Wong said he would look into this issue further.

Other Suggestions for the LAC to Address – Anthony LaBruna raised the issue whether the Local Rules should be amended to grant parties an automatic extension of the deadline to respond to complaints and dispositive motions as is the practice in the District Court (See District Court Local Rules 6.1(b) and 7.1(d)(5)). Mark Hall noted that these specific District Court Local Rules are currently under consideration by the “District Court Sweeps Subcommittee” as part of the Local Rules Revision Committee.

Judge Stern Pro Bono Bankruptcy Program – Ginny Fortunato noted that Judge Gambardella would be providing training for participants in the Judge Stern Pro Bono Bankruptcy Program. There are currently 15 participating attorneys and 17 participating students. Lowenstein Sandler will host a seminar to inform large firms of the ability to participate in the project without fear of conflicts based on a recent NJ Ethical Opinion.

15. Next Meeting Date: January 6, 2015 at 6 pm. Location TBD.

16. Motion to Adjourn: Made and seconded. Motion unanimously approved. Meeting adjourned.