

Minutes of Lawyers' Advisory Committee Meeting

Date of Meeting: July 15, 2015

Location of Meeting: Forsgate Country Club, Monroe Township, NJ

Members in Attendance: Honorable Kathryn C. Ferguson, Chief Judge, Honorable Christine M. Gravelle, Honorable Andrew B. Altenburg, Jr., Honorable Vincent F. Papalia, Mark E. Hall, Chair, William Mackin, Vice-Chair, James J. Waldron, Clerk for the US Bankruptcy Court, Jeanne Naughton, Deputy Clerk for the US Bankruptcy Court, Robert J. Schneider, US Trustee's Office, David Beslow, Carrie J. Boyle, Ramanjit K. Chawla, Andrew B. Finberg, Eamonn O'Hagan, Catherine E. Youngman and Mohung Wong.

Moment of Silence. Before the start of the meeting, Chair Mark Hall asked that everyone observe a moment of silence in support of our dear friend and former LAC Chair, Jaimie Finberg on the recent loss of her mother.

I. **Welcome and Update.** Chair Mark Hall welcomed all in attendance and provided an update on activity since the April 1, 2015 LAC meeting. The April 1, 2015 meeting minutes had been approved and posted on the Court's website. The LAC's new by-laws have been posted on the Court's website. Two members are cycling off the LAC. Additionally, as a result of the composition of the LAC under the new by-laws, there are three additional membership vacancies to fill. Jerrold N. Poslusny, former State Bar Liaison, has left the LAC as he joined the bench as a US Bankruptcy Judge for our District. Stacey L. Meisel has also left the LAC as she is preparing to join the bench as a US Bankruptcy Judge for our District. As of our July 15, 2015 meeting, there are two new liaison members: Michael E. Brown will be the new State Bar Liaison to the LAC, replacing Judge Poslusny, and Eamonn O'Hagan will be the new IRS Liaison to the LAC, replacing Anthony J. LaBruna.

II. **Chapter 11 Subcommittee Report.** Michael Viscount, Subcommittee Chair, was absent. Chair Mark Hall reported that the Chapter 11 Subcommittee is exploring the adoption of a local rule expanding Fed. R. Bankr. P. 3007(d) as it pertains to omnibus claims objections. To date, the Subcommittee has drafted a proposed new rule, but has yet to fully consider and approve the rule. The Subcommittee intends to do so and propose a recommended rule to the entire LAC prior to the next meeting.

III. **Chapter 13 Subcommittee Report.** Al Russo, Subcommittee Chair, was absent. Chair Mark Hall noted that there was no Chapter 13 subcommittee report for this meeting, but the Chapter 13 Subcommittee will be reporting on several old and new business items at the next meeting. Mark Hall reported that this was Al Russo's last meeting as Chapter 13 Subcommittee Chair and that the Chapter 13 Subcommittee would need a new Chair. Andrew Finberg was selected as the Chapter 13 Subcommittee's new chair by unanimous consent of the Chapter 13 Subcommittee.

IV. **Local Rules Subcommittee Report.** Catherine Youngman, Subcommittee Chair, reported that the Local Rules Subcommittee was still reviewing potential new Local Rules

related to: (a) a consumer Chapter 7 debtor's attorney's minimum level of duties similar to chapter 13 practice in D.N.J. LBR 2016-1(j) and Appendix B to that Rule; (b) use of outside contract counsel; and (c) partial chapter 7 flat fee payments. Vice Chair Bill Mackin circulated a memo encompassing thoughts and discussion from the April 1, 2015 LAC meeting (and thereafter) on these proposals which suggested significant changes to the original proposal. August 14, 2015 was set as the final deadline for Members to submit any additional thoughts or comments to the subcommittee on these proposed rules. All comments should be submitted to Catherine Youngman, Local Rules Subcommittee Chair. Thereafter, the subcommittee will meet and confer on producing a final product for submission to the entire LAC for consideration at the next meeting.

V. **Legislative Subcommittee Report.** Brian Nicholas, Subcommittee Chair, was absent. Chair Mark Hall reported that the National Bankruptcy Rules Committee is digesting the comments received during the public comment period and preparing for public meetings on October 1 and 2, 2015 in Washington, DC. Once the Rules Committee is satisfied with the Rules, they will forward the proposed Rules to the Judicial Conference for review and approval. If approved by the Judicial Conference, the proposed Rules will be sent to the Supreme Court for consideration.

VI. **Website/Social Media Subcommittee Report.** Prior to the meeting, Stacey Meisel recommended and the Website/Social Media Subcommittee unanimously approved Subcommittee Chair Meisel being replaced by David Beslow considering Stacey Meisel's impending move to the bench.

Mo Wong provided a status report on making all forms on the website fillable and/or available via Word/Word Perfect. If forms are to be made available, they will be using the Word format, not the WordPerfect format. The primary issue in making court forms available in Word format is prevention of the ability to change the content of the forms, something the Court is currently considering.

VII. **Newsletter Subcommittee Report.** Carrie Boyle, Subcommittee Chair, reported that the second edition of the LAC's Newsletter, "The Absolute Priority," is to be published electronically on the Court's website, hopefully to coincide with the recruiting campaign for attorneys to volunteer for the bankruptcy pro bono projects. Potential articles/topics for the Second Edition of TAP include: (1) feature on the Rutgers Camden/Newark bankruptcy pro bono projects; (2) interview with Michael Viscount re: Revel case. Chief Judge Ferguson suggested that Sharon Levin of Lowenstein Sandler be interviewed for the second edition to discuss her representation of Detroit's largest union in the city's Chapter 9 case and related issues. Judge Altenburg suggested that the newsletter carry a permanent "notices" section highlighting the proper service address and contact information for the IRS, the State of New Jersey and PEPCO/Atlantic City Electric.

VIII. **Board of Judges Update.** Chief Judge Kathryn Ferguson reported that Judge Christine M. Gravelle, U.S.B.J. is the new liaison from the Board of Judges to the LAC.

IX. **Rules Committee Update.** Chief Judge Kathryn Ferguson reported that the new local

rules will become effective on August 1, 2015. Seminars will be conducted as early as fall 2015 to publicize the new rules for practitioners.

X. **Clerk's Report.** Jim Waldron reported that filings continue to decrease and that significant funding and staffing cuts are anticipated in October 2015. Implementation of the NextGen CM/ECF software is on track to go live in October 2015, which will require upgraded PACER accounts for individual filers.

XI. **Liaisons' Reports:**

A. **District Court.** Shoshana Schiff was absent. No Report.

B. **U.S. Trustee.** Robert Schneider reported that regional trustee training will take place in September 2015.

C. **IRS.** Eamonn O'Hagan was welcomed as the new IRS liaison and reported that he was the point of contact for all federal matters in bankruptcy cases.

D. **N.J. Attorney General.** Ramanjit Chawla reported that the resolution of bankruptcy tax matters remained the office priority and that the office is working on revising language to be included in proofs of claim filed by the N.J. Attorney General.

E. **N.J. State Bar.** New State Bar liaison Michael Brown was absent. No report.

XII. **Old Business**

None, other than items captured in the Subcommittee Reports.

XIII. **New Business**

A. **Chapter 13 Subcommittee** - will consider the following new business:

(1) The continued use of "no look fees" and associated issues in Chapter 13 cases.

(2) Whether banks should be required to submit their signed final loan modification papers when they have actively participated in the loss mitigation program in light of the recent 6th Circuit case of Trombly v. Seterus, where the court, based on the Michigan statute of frauds, affirmed dismissal of the debtors' complaint to enforce the terms of a mortgage modification agreement because the bank never signed the modification agreement. The Chapter 13 Subcommittee is considering this suggestion as part of its previous recommendations re: the loan modification program and will report on this topic at the next meeting. Discussion at the LAC meeting focused on the need to continue the loss mitigation program with most attorneys being satisfied with the recent success of

the program and a desire to see it continue.

(3) Whether Local Rule 3015-1(b) comports with the requirements of Fed. R. Bankr. P. 7001(2) and Third Circuit case law. See SLW Capital, LLC v. Janica Mansaray-Ruffin (In re: Janica Mansaray-Ruffin), 530 F.3d 230 (3d Cir. 2008). Local Rule 3015-1(b) allows a chapter 13 debtor to include a motion in his/her plan to avoid a judicial lien under § 522(f) or to avoid a lien and reclassify the related claim in whole or in part. This practice runs contrary to Rule 7001(2) according to the Third Circuit. In considering this issue, Al Russo, former Chapter 13 Subcommittee chair, noted that following the Third Circuit's decision in Mansaray-Ruffin, it was determined that lien stripping in a plan was only permissible when it related to valuation. The Chapter 13 Subcommittee is considering whether to propose a modification to Local Rule 3015-1(b) to narrow the scope of the Rule consistent with Fed. R. Bankr. P. 7001(2) and the Mansaray-Ruffin decision and will report on this topic at the next meeting.

(4) Whether the Local Rules should be modified to allow a representative for a deceased debtor to be excused from the financial management requirement by producing the debtor's death certificate without the need to file a motion or application with the Court. Discussion during the LAC meeting focused on the frequency with which such requests might actually be made and the uncomplicated nature of the motion should it continue to be required. The Chapter 13 Subcommittee is considering this suggestion and will report on this topic at the next meeting.

B. The Local Rules Subcommittee will consider the desirability of implementing a local rule and local forms (similar to the supplemental Chapter 13 fee forms) to simplify the process for Court approval of mediators' fees, at least when such fees are *de minimis* (perhaps \$5,000 or \$10,000) and report on this topic at the next meeting.

C. Jury Trials by Consent in the Bankruptcy Court. Chair Mark Hall advised that the EDNY Bankruptcy LAC Chair wanted to know if the NJ District Court had entered an order pursuant to 28 U.S.C. § 157(e) authorizing the NJ Bankruptcy Courts to conduct jury trials when parties consent. Such an order exists in the SDNY but not in the EDNY. Since the NJ District Court has not issued such an order, the inquiry to Mr. Hall raised the issue of whether this is a matter on which our LAC should now take action. During general discussion, led primarily by Jim Waldron, it was noted and agreed that since there was no such actual request presently made by any litigants in any pending DNJ bankruptcy case, that the issue was not ripe for action and that if, in the future, parties in a NJ bankruptcy case desire and consent to a jury trial, the judge before whom the consensual request is made shall bring the matter to the attention of the Clerk's Office for appropriate action in seeking the entry of an authorizing order.

XIV. Next Meeting Date - TBD

XV. Motion to Adjourn. Motion made and seconded. Motion unanimously approved. Meeting adjourned.

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