

Minutes of Lawyers Advisory Committee Meeting

Meeting Date: September 14, 2016

Meeting Location: Forsgate Country Club, Monroe Township, NJ

Members in Attendance: Hon. Kathryn C. Ferguson, Chief Judge U.S. Bankruptcy Court, Hon. Christine M. Gravelle, William Mackin, Chair, Catherine Youngman, Vice Chair, Jeanne A. Naughton, Deputy Clerk US Bankruptcy Court, Martha Hildebrandt, US Trustee's Office, Robert J. Schneider, US Trustee's Office, Isabel C. Balboa, Standing Chapter 13 trustee (Camden Vicinage), Morris Bauer (Commercial Bankruptcy/Chapter 11 Subcommittee Chair), David G. Beslow, Carrie J. Boyle (Newsletter Subcommittee Chair), Anne S. Cantwell, Ramanjit K. Chawla, E. Richard Dressel, Andrew B. Finberg (Chair, Consumer Bankruptcy Subcommittee Chair), Mark E. Hall, Brian Hofmeister, Kim Lynch, Karina Pia Lucid, Louis A. Modugno, Cassandra Porter, Shoshana Schiff (Local Forms Subcommittee Chair), Ross J. Switkes, and Michael J. Viscount. Guest attendee: Brian C. Nicholas.

Call to Order: Meeting called to order at 6:24 p.m.

Quorum: Chairman William Mackin reported the existence of a quorum to conduct business.

Special Presentation by Hon. Kathryn C. Ferguson, Chief Judge U.S. Bankruptcy Court – Judge Ferguson extended special recognition and thanks to the following members who were cycling off the LAC for their time and dedication during their terms of service: Joseph Casello, Virginia Fortunato, and Brian Nicholas. Each was given a certificate of appreciation. Judge Ferguson also welcomed new members, Isabel C. Balboa, E. Richard Dressel, Mark Hall, Brian Hofmeister, and Kim Lynch, to the LAC.

I. Welcome, and Administrative Update – William Mackin, LAC Chairman, thanked the departing members for their contributions, welcomed the new members and recognized those members who had agreed to renew their terms of service. Chairman Mackin gave new members a brief explanation of the LAC's function, discussed Subcommittee assignments for the coming year, and reviewed the standing non-publication policy. The June 8, 2016 Meeting Minutes had been reviewed, approved, and posted on Court website. Proposed Local Rule 3022-1 (Closing and Reopening a Bankruptcy Case) had been transmitted to the Board of Judges for consideration.

II. Commercial Bankruptcy/Chapter 11 Subcommittee Report – Morris Bauer, Chair reported that the Subcommittee is to resume its review of pending matters with the inclusion of the newly assigned Subcommittee members.

III. Consumer Bankruptcy Subcommittee Report – Andrew Finberg, Chair reported that the Subcommittee had concluded its extensive review of issues related to

suggestions from the bar for an increase in the chapter 13 “no-look” fee. Written proposals will be submitted for consideration by the entire LAC.

IV. Local Rules Subcommittee Report - Catherine Youngman, Chair reported that the Subcommittee continues to discuss motions to reinstate cases and the need for a local rule fixing the time limit for consent to jury trials in the Bankruptcy Court under Fed.R.Bank.P. 9015(b). Reporting as a member of the Third Circuit LAC, Ms. Youngman noted that the Third Circuit Conference is scheduled for April 19-21, 2017 in Lancaster, PA and sponsorships are being solicited.

V. Local Forms Subcommittee Report – Shoshana Schiff, Chair reported that the Subcommittee is looking into the suggestion for a Standard form of loan modification order for use within the District.

VI. Newsletter Subcommittee Report – Carrie Boyle, Chair reported that the next edition of The Absolute Priority newsletter should be ready for publication by the end of September. Ms. Boyle noted that additional submissions are always welcome.

VII. Board of Judges Update – Honorable Christine M. Gravelle, USBJ reported that the Board considered proposed Local Rule 3022-1 (Closing and Reopening Cases), but such a rule is not needed because the Clerk’s office has developed a procedure and there is a court form certification of completion of plan payments that allows individual chapter 11 debtors to obtain discharge without the need to reopen a closed case. The Board accepted proposed Local Rule 3007-2 (Omnibus Claims Objections) with some minor revisions. Board discussion on proposed Local Rules 2016-6, 2016-7, 2016-8 and 2016-9 (Minimum Consumer Chapter 7 Debtor Counsel Duties and Use of Outside Contract Counsel) has been tabled. The Board would like to have one or more LAC representatives attend a future Board meeting, perhaps in February 2017, for a joint discussion on these proposals, especially in light of the fact that Jim Waldron has advised the Board that there is a national study presently being conducted on issues related to unbundling and that perhaps further consideration might benefit from completion of that study. The comment period for several proposed national rules, including Rule 3002.1 related to notices of payment changes for HELOC loans, would be expiring in December 2016.

On September 22, 2016 Arthur Abramowitz and David Ravin will be honored at the Annual NJBLF Outing at the Maplewood Country Club, Maplewood, NJ. Sponsorships are still available and attendance is encouraged to golf, play tennis and attend the cocktail reception and dinner.

On September 29, 2016 there will be an Asian/Pacific Islander Heritage Day lunch celebration at the Courthouse in Newark and all are welcome to attend.

The State Bar Association Annual Dinner, this year honoring Jim Waldron, sponsored by the IWIRC – NJ Network and other groups will take place November 16, 2016 at the Hilton Hotel, East Brunswick, NJ from 6-9 pm.

The next Board of Judges meeting is scheduled for October 14, 2016.

VIII. Clerk's Report – Jeanne Naughton reported that bankruptcy filings and court staffing and funding remain fairly stable - roughly equal with last year's statistics. Jim Waldron will officially retire on January 3, 2016. Judge Ferguson confirmed that the Board of Judges had selected Jeanne Naughton to become the next Clerk of the Court on Jim's retirement. Mo Wong will replace Jeanne Naughton as Deputy Clerk. Mary Shashaty's retirement celebration will take place on December 2, 2016 at the Westin Hotel in Mount Laurel, NJ.

IX. Liaison Reports

A. District Court – Shoshana Schiff reported that the District Court Historical Society 2016 Chairman's Ball will take place on October 14, 2016 at the Newark Museum.

The Essex County Bar Association – Debtor Creditor Section and the IWIRC - NJ Network will sponsor a discussion panel on Bankruptcy and Taxes on October 13, 2016 beginning at 8:30 am to 10:00 am at the offices of McCarter and English, LLP, Newark, NJ. Panelists include the Honorable John K. Sherwood, U.S.B.J, Ramanjit Chawla, Deputy Attorney General State of New Jersey, Eamonn O'Hagan, Asst. U.S. Attorney and Catherine Youngman, Esquire. A second discussion panel on Bankruptcy and Taxes, sponsored by the IWIRC - NJ Network and the Mercer County Bar Association will take place on October 20, 2016 beginning at 8:30 am to 10:00 am at the offices of Stark & Stark, Lawrenceville, NJ. Panelists include the Honorable Michael B. Kaplan, U.S.B.J., Al Russo, Standing Chapter 13 Trustee (Trenton Vicinage), Ramanjit Chawla, Deputy Attorney General State of New Jersey, and Eamonn O'Hagan, Asst. U.S. Attorney,

B. US Trustee – Martha Hildebrandt reported that Robert Schneider was now fully back with the Newark office after assignment and that annual trustee training was scheduled for September 23, 2016.

C. IRS – Eamonn O'Hagan was absent.

D. N.J. Attorney General – Ramanjit Chawla indicated that there was nothing new to report.

E. NJ State Bar – Michael Brown was absent. Chairman Mackin conveyed Mr. Brown's report that the Bench Bar Conference will take place at the Hilton Hotel East Brunswick, NJ on March 10, 2017. If anyone has any interesting topics and/or would like to speak, please contact Mr. Brown.

F. Federal Bankruptcy Bar Assoc. of New Jersey – Mark E. Hall reported that the Association continues to hone its mission statement and is in the process of amending its by-laws with the goal of more actively providing and sponsoring CLE events for a broad spectrum of bankruptcy professionals.

X. Old Business – None other than set forth above.

XI. New Business –

A. National Chapter 13 Plan Form. There is a truncated comment period for adoption of proposed amendments to Federal Rule of Bankruptcy Procedure 3015 and new proposed Federal Rule of Bankruptcy Procedure 3015.1. Rule 3015 would require use of a proposed national uniform chapter 13 plan form unless a District opts out and uses a form of chapter 13 plan that conforms to the requirements of Rule 3015.1. It is anticipated that these rules will become effective on December 17, 2017. Our District will have to make a decision on whether to use the national form chapter 13 plan or to opt out and use our own district-wide chapter 13 plan form.

In order to get ahead of this issue, to allow the LAC enough lead time to make recommendations to the Board of Judges, and to allow the Board enough time to consider the LAC recommendations and to thereafter take appropriate action, Chairman Mackin asked the Local Forms Subcommittee to monitor the adoption and effectiveness of these rules and to begin discussing whether this District should adopt the national form chapter 13 plan or continue using our local form chapter 13 plan.

The Local Forms Subcommittee will review this District's present form chapter 13 plan to determine if it complies with proposed Rule 3015.1 and if not, to identify those changes that would be required to do so. Part of this review should also focus on the issue raised by John Morton, Esquire concerning Part 4(c) of the local form chapter 13 plan which deals with the surrender of property. That section states, "Upon confirmation, the stay is terminated as to surrendered property". Mr. Morton is concerned that this language provides only limited relief in that it would terminate the stay of an act as to property under Code section 362(c)(1), but not the stay of any other act under 362(a).

On a related matter, Chairman Mackin asked the Consumer Bankruptcy Subcommittee to expedite consideration of a long-pending issue - Local Rule 3015-1(b)'s compliance with due process under Fed. R. Bankr. P. 7001(2) and SLW Capital, LLC v. Janica Mansaray-Ruffin, 530 F.3d 230 (3d Cir. 2008). The Consumer Bankruptcy Subcommittee should transmit its written conclusions to the Local Forms Subcommittee within the next 30 days to assist the Local Forms Subcommittee in discussing whether this District should adopt the national form chapter 13 plan or continue using our local form chapter 13 plan.

B. Online Nationwide 341 Coverage Service. The UST Philadelphia office was alerted to an email being received by debtors' attorneys from an entity called "MyMotionCalendar.com." This entity offers to provide "a coverage attorney" for 341 meetings. It appears to have a nationwide pool of "coverage attorneys" (seeing as they advertise "Nationwide 341 Hearing Coverage") which it refers to as "local counsel." Apparently, it sends you a list of upcoming 341 meetings and all you have to do is click on one, at which point "All of the case information will auto-populate on the reservation form and all you need to do is upload the necessary documentation and provide written instructions for local counsel." All bankruptcy trustees were asked to monitor whether or not this develops into a problem for the professional handling of bankruptcy cases in this District.

XII. Next Meeting Date – December 7, 2016 - Location TBD

XIII. Motion to Adjourn - motion made, seconded and unanimously approved.