

Minutes of Lawyers Advisory Committee Meeting

Date of Meeting: April 1, 2015

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

Members in Attendance: Honorable Gloria M. Burns, Chief Judge, Honorable Kathryn C. Ferguson, Honorable Andrew B. Altenburg, Jr. Mark Hall, Chair, William Mackin, Vice-Chair, Jeanne Naughton, Bankruptcy Clerk's Office, Martha Hildebrandt, US Trustee's Office, Al Russo, Chapter 13 Trustee, Jerry Poslusny, David Beslow, Carrie Boyle, Ramanjit K. Chawla, Andrew Finberg, Stacey Meisel, Louis Modugno, Shoshana Schiff, Michael Viscount, Mo Wong, Anthony LaBruna, and guest attendee Eamonn O'Hagan (IRS).

Pre-Meeting Toast to Chief Judge Gloria M. Burns. Before the meeting was officially opened, Chairman Mark Hall noted that, due to her impending retirement, this would be the last LAC meeting which Judge Gloria M. Burns would attend as our Chief Judge. Mr. Hall thanked Judge Burns on behalf of the entire LAC for her unflagging support and leadership of the LAC and led a toast to honor our friend Chief Judge Gloria M. Burns. Judge Burns thanked the LAC members for all of their hard work and dedication. Mr. Hall also took the opportunity to congratulate LAC member Jerry Poslusny on his selection by the Third Circuit Court of Appeals as the newest Bankruptcy Judge designee for our District.

I. **Welcome and Update** - Chairman Mark Hall welcomed all members to the meeting and reported approval of the January 6, 2015 Meeting Minutes by way of the negative notice procedure. Thanks to Mo Wong, the January 6, 2015 Meeting Minutes were posted to the website shortly after the January 6, 2015 meeting. Mr. Hall also reported that there had been approval of the form Chapter 11 Small Business Scheduling Order and submission of that form Order to the Board of Judges. Judges Burns and Ferguson reported that this form was approved by the Board of Judges with a few minor teaks and would be available on the Court's website shortly.

II. **Chapter 11 Subcommittee Report** - Michael Viscount, Chair, had not yet arrived to the meeting and Mr. Hall reported in his place that on March 18, 2015, after consideration and drafting by the Chapter 11 Subcommittee and comments and approval from the entire LAC, the proposed form Chapter 11 Small Business Scheduling Order was submitted to the Board of Judges for consideration. As set forth above, this form was approved by the Board of Judges with a few minor tweaks and will be available on the Court's website shortly. Mr. Hall also reported on the Subcommittee's consideration of a local rule related to Omnibus Claims Objections. As initially reported at the January 6, 2015 meeting, the Chapter 11 Subcommittee has considered whether there is a need for our district to adopt a local rule expanding Fed. R. Bankr. P. 3007(d) as it pertains to omnibus claims objections. The Subcommittee has determined a need exists and will be proposing a new local rule on this issue for consideration by the entire LAC, likely before the next LAC meeting.

III. **Chapter 13 Subcommittee Report** - Al Russo, Chair, reported that the District's three chapter 13 trustees will conduct a question and answer breakout session at this year's

Bench-Bar Conference and that questions are being solicited in advance of the session. The Chapter 13 Subcommittee prepared, and submitted for consideration by the entire LAC, a revised form of Order Authorizing Retention, adding a new paragraph 4 to remind retained professionals of the need to move for court approval of proposed settlements. Mr. Russo reported that the Chapter 13 Subcommittee continues to review the No Look Fee for Chapter 13 services and supplemental fees to determine if it is still a good idea or whether any changes should be made. Judge Ferguson noted that the Board of Judges had asked her to request that the LAC globally examine the entire chapter 13 fee structure including No Look Fees, supplemental fee applications and the propriety of including expenses in such requests. Judge Burns added that the review should also include a review of the services that are to be included in a No Look Fee, if such fee is retained. Judge Altenburg noted the issues that arise in connection with the supplemental fee application process include seeking supplemental fees for services that should be anticipated at the outset of the case or in which no appearance is required.

IV. Local Rules Subcommittee Report - Catherine Youngman, Chair, was absent. Chairman Mark Hall reported that the Subcommittee was tabling the issue regarding the adoption of a local rule similar to Rule 9010-1(d) in the District of Delaware allowing counsel 30 days to apply for retention approval, pending further clarification. Bill Mackin reported on the Subcommittee's consideration of potential new Local Rules related to 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. The Subcommittee's memorandum, highlighting the problems to be addressed (e.g. unbundling, use of outside contract counsel, and pre-petition flat fees) and suggested rules D.N.J. LBR 2016-4 through D.N.J. LBR 2016-8, were circulated to the entire LAC for consideration. Mr. Mackin noted that the proposed rules were drafted after consideration of similar rules and guidelines in other Districts and that the Subcommittee's product was a result of combining from such sources. Both Mr. Hall and Mr. Mackin asked that all LAC members review the memorandum and proposed rules and provide comments or questions to Mr. Mackin to take back to the Subcommittee for further discussion and editing.

V. Legislative Subcommittee Report - Brian Nicholas, Chair, was absent. Chairman Mark Hall reported that the Rules Committee for the Proposed National Rules is digesting the comments received during the public comment period and preparing for public meetings on April 20 and 21, 2015 in Pasadena, California and on October 1 and 2, 2015 in Washington, DC. If approved by the Judicial Conference, the proposed Rules will be sent to the Supreme Court for consideration.

VI. Website/Social Media Subcommittee Report - Stacey Meisel, Chair, and David Beslow reported on advertising revisions to the LinkedIn privacy policy which all LAC members, especially those who had already joined the LAC LinkedIn page, were encouraged to review. Chairman Mark Hall also noted that a New York County Lawyers Association opinion had cautioned attorneys who maintain a presence on LinkedIn that they may be engaged in a form of legal advertising requiring compliance with required forms of disclosure, and offered to share that opinion with anyone interested in reviewing.

VII. Newsletter Subcommittee Report - Carrie Boyle, Chair, reported that the Subcommittee expected the inaugural edition of the LAC's newsletter "The Absolute Priority" to

be available for distribution in paper format on May 1, 2015 at the Bench-Bar Conference. Ms. Boyle's written report as to the status of publication, content of the first edition and cost of the first edition was distributed for review by all LAC members. The cost of publishing the inaugural paper edition will be approximately \$270. There was a discussion of the means by which these costs could be paid, either by contributions from the LAC or by private firm donations. All subsequent editions will be in electronic format (i.e. there will not be similar costs for future editions). Ms. Boyle also noted that several people have already contacted her with ideas for content and she invited all LAC members and others to continue to do so.

VIII. Board of Judges Update - Chief Judge Gloria Burns reported that this would be her last LAC Meeting and that her last day as Chief Judge would be May 1, 2015 after which Judge Ferguson would assume the duties as Chief Judge. Judge Burns congratulated Jerry Poslusny as the designee selected to succeed her on the bench. Judge Burns thanked the LAC members for their efforts on behalf of Board of Judges.

IX. Rules Committee Update - Judge Kathryn Ferguson reported that the revised Local Rules are close to implementation. The Board of Judges signed off on the revised Local Rules, which will be presented to the District Court of New Jersey for consideration on or about June 3, 2015. If there are no significant comments or revisions by the District of New Jersey, it is anticipated that the revised Local Rules will become effective as of August 2015. Judge Ferguson reported that there will be a general session at the Bench-Bar Conference on May 1, 2015 to discuss the revised Local Rules and that after implementation she expected there to be many CLE sessions dedicated to educating the bankruptcy bar about the rule changes.

X. Clerk's Report - Jeanne Naughton reported that filings continue to decline and that the Clerk's Office budget follows suit with another 9% employment cut anticipated next year. The national self-represented project has stalled. Mo Wong reported that the next generation CM/ECF program was on track to be received by the Clerk's Office in June 2015 and implemented in New Jersey about three months thereafter. New Jersey will be one of the first Districts (and the largest District, by filings) to use this new software as a pilot program.

XI. Liaisons' Reports:

A. District Court - Shoshana Schiff reported that the District Court LAC met on January 21, 2015. There are 4 vacancies on the District Court bench. On May 7, 2015 at 4 pm, there will be a dedication of the Honorable Anne Thompson Jury Assembly Room in Trenton. Ms. Schiff also reported that there was a spirited discussion on proposed *pro hac vice* rule changes, without resolution.

B. U.S. Trustee - Martha Hildebrandt reported that Don McMaster had retired from the U.S. Trustee's Office and that Shining Hsu had relocated to the San Diego office.

C. IRS - Anthony LaBruna, Jr. reported that Eamonn O'Hagan had joined the office to assist with IRS and bankruptcy matters. Mr. O'Hagan was introduced and welcomed as a guest at the LAC meeting.

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** - Jerry Poslusny reported that the Bench-Bar Conference will take place on May 1, 2015 and applauded Jaimie Finberg for her work on this year's program.

XII. **Old Business**

In an ongoing effort to aid practitioners, Mo Wong was continuing efforts to make more forms on the Court website useable as fillable forms. Most forms on the website are fillable, but 37 of them are not. Mo Wong is considering ten (10) of the most popular of the 37 non-fillable forms on the Court's website to determine efforts to convert to embedded forms. Further discussion will follow on the question of whether all forms should also be made available in Word/Word Perfect formats, even if fillable.

XIII. **New Business** - Judge Ferguson, noting that she will be Chief Judge for the next LAC meeting, announced that all LAC meeting for the foreseeable future would take place at a well known watering hole in Camden - before reminding members that it was April 1. No new business other than as reported through the Subcommittee reports.

XIV. **Next Meeting Date** - TBD

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