

Minutes of Lawyers Advisory Committee Meeting

Date of Meeting: September 2, 2015

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

Members in Attendance: Honorable Kathryn C. Ferguson, Chief Judge, Honorable Jerrold N. Poslusny, Jr., William Mackin, Chair, Catherine E. Youngman, 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, Mark E. Hall, Carrie J. Boyle, Ramanjit K. Chawla, Eamonn O'Hagan, Mohung Wong, Morris Bauer, Anne S. Cantwell, Virginia E. Fortunato, Karina Pia Lucid, Cassandra Porter, Ross J. Switkes, Shoshana Shiff and Michael Brown.

Pre-Meeting Toast. Prior to the meeting a champagne toast was made in celebration of Judge Ferguson's marriage. All the members of the committee wished Judge Ferguson and her husband well.

I. Welcome and Update – New LAC Chairman William Mackin began the meeting with a well-deserved tribute to outgoing Chairman Mark Hall for his excellent leadership and accomplishments. Chief Judge Ferguson presented Mr. Hall with a plaque in recognition of the LAC's heartfelt appreciation for his unflinching dedication and service. Mr. Hall thanked the LAC and graciously noted that he would continue to serve for the full 1 year term in his ex-officio capacity. Catherine Youngman was introduced as the new LAC Vice-Chair. New members Morris S. Bauer, Anne S. Cantwell, Joseph M. Casello (absent), Karina Pia Lucid, Cassandra Porter, and Ross J. Switkes were welcomed and provided with an explanation of the LAC's purpose and function. New members were also advised of the negative notice procedure for adoption of LAC meeting minutes. Chairman Mackin noted that due to the expiration of many former members' terms and increasing workloads, subcommittee chair and membership assignments would be reevaluated. Chairman Mackin also advised new members that the LAC has a LinkedIn group page. It is presently a closed group, with membership limited to LAC members. New members and those older members who are not yet a member of the group page were invited and encouraged to join. There was discussion about using the LAC LinkedIn page for all communications amongst the Committee. Thanks to Mo Wong, the July 15, 2015 LAC Meeting Minutes are now on the Court Website, as is an updated list of LAC members. All members were encouraged to review the updated list to insure accuracy and to report any necessary corrections directly to Mo Wong.

II. Chapter 11 Subcommittee Report – Chapter 11 Subcommittee Chair Michael Viscount was absent. LAC Chairman Mackin provided Mr. Viscount's report. Mr. Viscount is stepping down as subcommittee chair but will remain a member of the subcommittee. A new chair will be selected. The subcommittee attempted to meet to continue discussion of whether the DNJ should adopt a local rule expanding Fed. R. Bankr. P. 3007(d) as it pertains to omnibus

claims objections but were unable to obtain a quorum. The subcommittee will meet after a new chair is appointed to resume discussion of this topic with a view to bringing a formal recommendation for adoption of a new local rule to the full LAC.

III. Chapter 13 Subcommittee Report – Chapter 13 Subcommittee Chair Andrew Finberg was absent. Virginia Fortunato reported that the subcommittee continues consideration of the following matters:

- (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.
- (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. 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. There was a lengthy discussion about sufficient notice provisions under the Local Rules in regards to liens and avoiding of liens with input from both the New Jersey Division of Tax Liaison and the US Attorney IRS Liaison on these issues.
- (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. Chairman Mackin indicated that this matter will be removed from the Chapter 13 Subcommittee and will be referred to the Local Rules subcommittee as the issues go beyond chapter 13 practice.

IV. Local Rules Subcommittee Report - Catherine Youngman, Subcommittee Chair, reported that the subcommittee solicited input on the proposed local rule and guidelines with respect to minimum practice standards for consumer chapter 7 debtor’s counsel and with respect to appearance or contract counsel. The subcommittee reviewed comments from practitioners and the Office of the United States Trustee and held a conference call in late August. Full committee discussion resulted in the conclusion that any new local rule directed at

the conduct of appearance or contract counsel would actually have implications beyond chapter 7 practice. The subcommittee will continue to refine the discussion with the goal of preparing proposed local rules by the next meeting. The subcommittee is also considering 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).

V. Legislative Subcommittee Report – Brian Nicholas, Subcommittee Chair was absent. The subcommittee continues to monitor the progress of the National Bankruptcy Rules Committee.

VI. Website/Social Media Subcommittee Report – David Beslow, Subcommittee Chair, was absent. The subcommittee continues to consider making fillable forms available on the Court's website.

VII. Newsletter Subcommittee Report – Carrie Boyle, Subcommittee Chair, reported that the second edition of the LAC newsletter, "The Absolute Priority" will be published imminently on the Court's website. A feature article on Sharon Levine by Mark Hall will be included in the newest edition. There will also be an article about Judge Altenburg as well as information featuring the Clerk's Office and the Historical Society. As always the subcommittee Chair is looking for news about bankruptcy members to include in the publication.

VIII. Board of Judges Update – Judge Gravelle was unable to attend the meeting. Chief Judge Kathryn Ferguson reported that the Judges are discussing the uniformity of procedures throughout the vicinage. She also reported that the Third Circuit Conference is at the end of October and that the NCBJ is at the end of September and that there will be State Bar function and Federal Bar functions coming up, just stay tuned.

IX. Rules Committee Update - Chief Judge Ferguson reported much positive feedback on the new Local Rules. There are two seminars on the local rules to take place: One on October 29th at Stark & Stark in Lawrenceville (sponsored by IWIRC and the Mercer County Bar) and a second on November 19th at Gibbons, PC in Newark (sponsored by IWIRC and the Essex County Bar).

X. Clerk's Report – Jim Waldron reported that filings continue to decrease and that significant funding and staff cuts are anticipated in the fall of this year. The filings are down 6%. This could also lead to the District losing a bankruptcy judicial position in the future.

XI. Liaison's Reports:

A. District Court – Shoshana Schiff reported that there are three District Court nominees on hold awaiting confirmation by Congress. Chief Judge Simandle reported that the vacancies are affecting the operation of the Court. She also reported the

District Court LAC subcommittee just issued a recommendation to the DC LAC about a rule change for Rule 5.3 dealing with the sealing of documents and protective orders. Further, the DC LAC formed a subcommittee (which Ms. Schiff is chairing) to research the content and form of affidavits in support of requests for writs of execution.

B. US Trustee - Robert Schneider indicated that there was nothing new to report.

C. IRS – Eamonn O’Hagan reported that he is enjoying his position at the US Attorney’s Office working with the IRS with its bankruptcy issues.

D. New Jersey Attorney General – Ramanjit Chawla reported nothing new re: tax issues.

E. New Jersey State Bar – Michael Brown reported that the NJSBA is working on the Bench Bar dates for next year.

XII. Old Business – None, other than items captured in the subcommittee reports.

XIII. New Business

A. New Administrative Business

1. Subcommittee Composition and Assignments. Chair William Mackin noted that the existing chairs of the following subcommittees would continue in their present duties: (a) Chapter 13 Subcommittee (Andrew Finberg); (b) Legislative Subcommittee (Brian Nicholas); (c) Website/Social Media Subcommittee (David Beslow); and (d) Newsletter Subcommittee (Carrie Boyle). All members were asked to identify the subcommittees on which they would prefer to work and to indicate whether they would be willing to serve as Chairman for the Chapter 11 Subcommittee or the Local Rules Subcommittee. After receiving member replies, Chairman Mackin would make the appropriate assignments.

2. Possible Formation of New Subcommittee. Possible formation of a new “Local Forms” Subcommittee was discussed with generally positive feedback. There was a suggestion that such a Subcommittee would have to work closely with other existing Subcommittees and that it might be appropriate to make this a subcommittee of the Local Rules Subcommittee. The matter will be discussed further at the next LAC meeting after members have had time to give it proper consideration.

3. Possible Creation of Chapter 13 Liaison Position. – It was noted that with recent expiration of Al Russo’s term that the LAC was presently without any chapter 13 trustee members. Their input has been very helpful over the years and it was suggested that the LAC should consider creating a new liaison position for permanent chapter 13

trustee participation. The three standing chapter 13 trustees can rotate between themselves from year-to-year (or as they see fit) to participate in meetings, provide reports from the chapter 13 trustee perspective and to sit on subcommittees as needed. Creating such a liaison position can ensure a permanent voice from that essential practice constituency. Chairman Mackin created a temporary Ad-Hoc Subcommittee to be chaired by Mark Hall. Shoshana Schiff, Carrie Boyle, and David Beslow will also serve on the Ad-Hoc subcommittee. The Ad-Hoc subcommittee will review the LAC By-laws to determine if any amendments would be necessary to create such a new liaison position (and potentially other new liaison positions). Judge Ferguson will reach out to the 3 chapter 13 trustees to determine their level of interest in having such a new liaison position created and their willingness to participate in such a capacity on a rotating basis.

B. New Substantive Business

1. Standard Form of Loan Modification Order. The issue was raised as to whether the DNJ should have a Standard Form of Loan Modification Order. This issue was referred to the Chapter 13 Subcommittee for its consideration.

2. Notice of Payment Changes for HELOC loans. A practitioner noted that HELOC loans are usually tied to a Market Index Rate. Since it is not escrow the change is usually a few pennies or dollars. Pursuant to the terms of the Note the rate may change on the 15th of each month based solely on that Index. Usually, the lender does not know what the Index amount will be until close to the 15th of each month, making it difficult or impossible to comply with FBR 3002.1's requirement of 21 days' advance notice of the anticipated change. The practitioner asked the LAC if DNJ LBR 3002.1-1 could be amended to allow the lender to send HELOC payment changes directly to the borrowers and their counsel and then every quarter or six months file a summary of the changes on the individual case docket. This issue was referred to the Chapter 13 Subcommittee for its consideration.

3. Potential Notice Inconsistency in Procedures for Approval of Settlements Not Brought Before the Court on Motion. A chapter 7 trustee noted that there may be an inconsistency between FBR 2002(a)(3) (which requires 21 days' notice for approval of any proposed settlement) and the practice of approving a notice of settlement, without the filing of a motion, when approval becomes effective on the 15th day with the clerk's filing of a certification of no objection. This issue was referred to the Local Rules Subcommittee for its consideration.

4. Trustee Treatment of Unsecured Deficiency Claims. In cases where a secured creditor can liquidate its collateral (by stay relief or abandonment) but after doing so does not file an amended proof of claim for an unsecured deficiency, are there any concerns (especially due process concerns) when the case trustee assigns a value of \$0

the secured creditor's deficiency claim, either for purposes of plan distribution or for the purposes of estate accounting? This issue was referred to the Local Rules Subcommittee for its consideration.

XIV. Next Meeting Date – December 9, 2015. Location TBD.

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