

## MINUTES FOR LAC MEETING ON NOVEMBER 21, 2011

### **I. Call to Order**

Warren Martin, as Chairman of the LAC, called the meeting to order. A motion was made to move and accept the meeting minutes for the September 20, 2011 meeting.

### **II. Chapter 11 Subcommittee – Mark Hall, Chair**

Mark informed the members that the proposed Small Business Debtor's Combined Plan of Reorganization and Disclosure Statement had undergone some changes as a result of comments that the subcommittee received. Mark discussed the comments. Many of the comments had been incorporated into the document and then passed to the Board of Judges for review. The Judges made some changes to the document. Mark noted that the subcommittee was considering the changes and would give feedback to the Judges.

Mark indicated that the current draft was substantially revised draft from original version and that each revision made it better. He indicated that the only other jurisdiction with something similar to the Combined Plan and Disclosure Statement is Massachusetts and that document is not as good as the current NJ draft. Mark stated that within the next week or two he would send a revised draft to the Judges.

Warren Martin commented that procedurally the LAC should have the opportunity to see the new draft and make comments before the next Board of Judges' Meetings, which are scheduled for December 13 and March 13. Judge Wizmur expressed that making sure the document was right was more important than time frame. She recommended that the Judges look at it individually, between meetings and provide comments. She further indicated that the meeting dates were not critical.

### **III. Local Rules Subcommittee – Henry Karwowski, Chair**

#### **A. Proposed Local Rule 9006-1 – (Issue re: Bridge Orders)**

At the September meeting, Judge Stern expressed concerns with Bridge Orders. These issues still had not been addressed and the topic was adjourned until January's meeting.

#### **B. Local Rule 1007 -2 – Mailing – List or Matrix**

Henry thought the Clerks office wanted flexibility regarding this rule. Jim Waldron agreed and stated that another version of CMECF ("Next Gen") would be out within the next two years. The new version would have an automated system. The consensus was to leave well enough alone and the recommendation was for no change to this Rule.

Another issue arose as to whether heightened notice should be given to banks. Henry thought there should be no recommendation for this because there are no other heightened requirements.

Warren understood the historical reason for banks desiring this but commented that communications of legal documents within large institutions should be easier in this electronic age.

Judge Kaplan was not sure that a change will make a difference and that mail will still be misdirected.

Judge Lyons expressed that institutions can still direct the Clerk to send/direct pleadings to certain e-mail address.

Ginny Fortunato indicated that the transfer of documents from company to company could be a problem if the parties need to rely upon the loan documents.

Warren asked Brian Nicholas his view on the subject. Brian said it depends on whether clients get the information to him early or the night before but that everything was easier with electronic filing.

Judge Ferguson questioned how anyone could get around serving the addresses listed in the contract/documents when that was what the parties agreed.

Chris Gravelle questioned what should an attorney do if she does not have the contract or original loan documents. Ginny answered that she runs searches that show addresses for service in NJ and will ultimately send out to all the addresses. Judge Kaplan stated that pragmatically Courts are going to address the issues on the merits.

Warren expressed that Judge Ferguson raised a substantive issue and that we may still want to consider a change. Warren indicated that if we need to change a rule, it should not be to Rule 1007 but instead Rule 2002.

### **C. Rule 2004-1 – Depositions and Examination**

Henry recommended no change because Rule 2004 already refers to Rule 9016.

Mark Hall pointed out that the sections do not address methodology for service, i.e. mail, and that the existing rules do not capture how you can serve.

Henry thought that the problem then was really with Rule 9016 not 2004, therefore, we would need to look nationally at 9016 and Rule 45.

Mark stated that when he serves he looks at how he can serve and these rules do not say how to serve. There is a practical method but no rule.

Judge Ferguson commented on the Nevada Rule which is “do not repeat what is already in the national rules.” This makes local rules more complicated because they are only filling in gaps as to what is missing from the national rules.

The consensus was the national issues would not be discussed at the meeting.

**D. Local Rule 3016 – Chapter 11 Plan**

The recommendation was to abrogate this Rule.

**E. Local Rule 5071-1 – Continuances**

A general consensus was reached that confusion exists in this area. Henry’s view was that continuances were already addressed by Rule 9013-1. In effect, the adjournment of the hearing means adjournment of the response. The practice has been set and no need to formalize it.

Mark and Warren disagreed and thought it was open for interpretation because if you missed the first objection date but then obtained an adjournment, you could arguably take the position that you get more time.

Warren said you could read the rule as you read the rule for filing of a proof of claim – the time for filing runs from the first scheduled date – such as the 341 meeting date – and does not move just because the 341 moves.

Mark thinks we should clarify and clear up the confusion. Chris Gravelle agreed that it makes sense to clarify if we are discussing. Judge Ferguson stated that she has never seen this as an issue. Judge Lyons says he has seen it where after a deadline passes someone calls up to ask for adjournment. Judge Lyons further stated that it is never clear that adjourning the hearing date also adjourns the objection deadline.

Bruce Truesdale asked what happens if there is an adjournment because of a snow date and a party missed the deadline to object and then files that an objection because they had opportunity.

Judge Ferguson thought that there were suggestions of a solution without a problem. The purpose of the 7 days b/f requirement is so that there is time to read the objection.

The consensus was to carry this discussion to the January meeting.

**F. 7003-1 – Cover Sheet**

The reason for the cover sheet is statistics, therefore, we need the cover sheet if the Complaint is not e-filed. The Recommendation was for the Rule to state that a covers sheet is required unless filed by ECF.

A discussion occurred regarding captions on pleadings and why we still had the attorney initials and last four digits of social security number, since the District Court got rid of this requirement. The issue was tabled until January because more investigation needed to be done to find out why the District Court abrogated the requirement.

**G. 9013-1 – Motion Practice**

A discussion occurred regarding this Rule. Henry will consider and report back at the January meeting. A suggestion was made that perhaps a change should be made to the commentary rather than to the substance.

Judge Ferguson is chairing a committee to look at Rules from beginning to end, which is a long term project starting in January.

**H. Form Order Shortening Time**

A discussion occurred regarding telephonic notice portion. The recommendation is to add a check box to the form order to permit judges to check the box if they want to telephonic notice.

**IV. Chapter 13 Subcommittee – Herbert Raymond**

**A.** Herb advised the members that the Subcommittee will hold-off on reporting on the standard order regarding amending schedules.

**1.** Herb advised that he has received comments regarding a standard fee for attorneys' work in the Loss Mitigation Program. North Jersey attorneys have provided comments but the Subcommittee would like comments from South Jersey attorneys.

Marie-Ann Greenberg sent out a mass e-mail requesting comments on the amount attorneys thought would be reasonable if a standard fee was proposed.

Herb will draft a letter that can be provided to Isabel Balboa and Al Russo requesting South Jersey attorneys comment a proposed stand fee.

Thus far, Herb received comments which ranged from \$1,500--\$3,500.

Conclusion was that more feedback is needed from the Bankruptcy Bar.

**2.** The subcommittee is not recommending mandatory participation in the Default Mitigation portal (DMM). The feedback regarding use of the portal has been mixed. It appears it has been helpful in some cases and unhelpful in other cases.

There is an issue as not all servicers participate in the portal at this time.

A possible cost to the debtors was discussed briefly. The minimal cost of using the portal is currently paid by the servicers.

Subcommittee recommends reviewing the proposal to make the use of the Default Mitigation portal mandatory next year.

C. Will hold-off on discussion regarding expressly including Confirmation Orders within the 7-day Rule.

D. Will hold-off on discussion of whether distribution reports should be filed prior to distribution.

E. As to Application/Motion to discharge mortgage liens, judgments, etc., the Subcommittee will have a draft ready for the Members shortly.

F. Jeannie reported on the issue regarding whether the filing of a modified Chapter 13 Plan should automatically reschedule a confirmation hearing date.

The issue was going to be presented to the Board of Judges. The proposal is that if the modified plan is not filed within a certain time period before the scheduled confirmation date, the debtor's attorney would need to appear before the judge to discuss the adjournment request.

G. As to the supplemental schedule of debts, the subcommittee may recommend modifying the existing order converting a case. Subcommittee will have something shortly for the members and judges.

#### **V. Clerk's Report – Jim Waldron**

Jim discussed the current state of affairs regarding the bankruptcy court system. Currently there is a push to either:

- (1) consolidate functions or services with the District Court administratively; or
- (2) completely merge the operations between the District Court and Bankruptcy Court by eliminating the Bankruptcy Court Clerks office.

Jim gave an overview of the financial status of both Courts and examples of other Districts where the consolidation had already occurred in whole or in part. Judge Wizmur advised that an NCBJ Report indicates that although the sharing of services could provide benefits in smaller/less busy jurisdictions, it did not support consolidation in other areas with larger Bankruptcy Courts. Jim noted that the Bankruptcy Court and District Court Clerks' Offices cannot be merged without legislative action.

#### **VI. Liaison Reports**

Warren handed out a written report from the District Court Liaison, Mike Sirota. Martha Hildebrand provided the U.S. Trustee's report and Jerry Poslusny provided the State Bar Report,

noting that Andy Altenburg was looking for topics for the 2012 Bench Bar Conference. There were no reports from Ramjit Chawla of the AG's office, or Wendy Gardiner of the IRS, who were unable to attend.

## **VII. New Business**

**A.** Discussion regarding updating the website. Currently there are only minutes dating back to 2008.

Jim suggests a newsletter being sent out by the Court through e-mail blasts. He also suggested reworking the website to put the proposed newsletters on the website too. Newsletter could be biannually, perhaps, February and September (Spring and Fall). The newsletter could be used to solicit ideas from the bar.

There is currently a link on the website so that comments can be provided. Very rarely used, if ever, by attorneys at the present time.

**B.** Judge Lyons suggested that the Chapter 11 Subcommittee examine a possible Individual Chapter 11 Plan. It was suggested that the Subcommittee reach out to attorney Richard Schaffler for possible input.

## **VIII. Next Meeting Dates**

January 31, 2012  
February 27, 2012

**Meeting adjourned.**