

## **Minutes of Lawyers Advisory Committee Meeting**

**Meeting Date:** March 23, 2016

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

**Members in Attendance:** Honorable Kathryn C. Ferguson, Chief Judge, Hon. Christine Gravelle, Hon. Jerrold N. Poslusny, Jr., William Mackin, Chair, Catherine E. Youngman, Vice-Chair, James J. Waldron, Clerk US Bankruptcy Court, Jeanne Naughton, Deputy Clerk US Bankruptcy Court, Robert J. Schneider, US Trustee's Office, Mark E. Hall (immediate past LAC Chair), Morris Bauer, Carrie J. Boyle, Anne Cantwell, Joseph M. Casello, Ramanjit K. Chawla, Andrew Finberg, Karina Pia Lucid, Brian Nichols, Eamonn O'Hagan, Cassandra Porter, Ross J. Switkes, Shoshana Schiff, and Michael J. Viscount.

**Call to Order:** Meeting called to order at 6:37 p.m.

**Quorum:** Vice Chair Catherine Youngman reported the existence of a quorum to conduct business.

**I. Welcome and Opening Remarks:** Chairman Mackin opened the meeting and welcomed everyone. The Chairman advised that the December 9, 2015 LAC meeting minutes were approved by negative notice and had been posted to the Court's website. The Chairman also reminded everyone the LAC functions only as an advisory body to the Board of Bankruptcy Judges; the LAC makes no policy decisions, only recommendations. While the deliberative documents, including suggestions of draft rule changes, are to be freely circulated among LAC members, they are not public documents in any sense. Consequently, the LAC's business discussions, communications, documents, and recommendations – not being final on any matter - are subject to the District Court's non-publication policy. The Board of Judges will solicit public feedback if necessary or useful to consider an LAC recommendation. When the Board of Judges recommends a Local Rule change, there is also a mandatory period for public comment. Premature publication of LAC deliberations would be contrary to this process, unauthorized by the statute or local rules, and possibly chilling of the LAC's deliberative processes. Members were therefore cautioned to be mindful of and abide by the non-publication policy in the future.

**II. Chapter 11 Subcommittee Report** - Morris Bauer, Chair, reported on the Subcommittee's proposed change to D.N.J. LBR. 3007-2 for omnibus claims objections:

"D.N.J. LBR 3007-2 Claims —Omnibus Objections

In addition to the permitted omnibus claims objections listed in Fed. R. Bankr. P. 3007(d), a party in interest may file omnibus objections to: (a) reduce the amount of a claim; or (b) modify the claim's priority status. Each claim holder whose rights are affected by an omnibus objection listed in Fed. R. Bankr. P. 3007(d) or D.N.J. LBR 3007-2 must receive a notice that must conform to Local Form Notice to Objection to Claim."

Amendments were offered. Eammon O'Hagan commented that service of motions on the IRS continues to be a problem and suggested including a reference to Local Rule 9014(b) to clarify service requirements. The suggested amendment was adopted. The Subcommittee recommended that the LAC submit the proposed change to D.N.J. LBR. 3007-2, as amended, to the Board of Judges for their consideration. Chairman Mackin moved the matter for a vote. Unanimous vote to refer to Board of Judges as amended. Motion carried. The proposal will be transmitted by the Chairman to the Board of Judges for consideration.

The Subcommittee has also been looking at motions to administratively close individual chapter 11 cases. The purpose of the rule would be to close an individual chapter 11 case after the plan has been substantially consummated and fully administered but is open for the sole purpose of making plan payments. Without a rule in place to close the case, the debtor would still be obligated to make quarterly payments to the Office of the United States Trustee. The Subcommittee is working with the Office of the United States Trustee to come up with appropriate language for a draft rule.

The Subcommittee is also reviewing a recommendation for a combined hearing on the disclosure statement and plan in liquidating chapter 11 cases.

**III. Chapter 13 Subcommittee Report** - Andrew Finberg, Chair reported that the Subcommittee is continuing to review issues related to the existing “no-look” fee, including the present amount, the services to be included in “no-look” fee cases, and the relationship of periodic supplemental fee applications in chapter 13 practice. The Chair reported that he had received written communication from a group of private practitioners setting forth a number of reasons in support of increasing the present “no-look” fee amount. The Chair also reported that some attorneys, particularly in the North, do not take chapter 13 cases on a “no-look” fee basis, but instead file fee applications in every case, similar to chapter 11 practice. There was a lengthy discussion among the LAC members about chapter 13 practice and the pros and cons of no look fees, leading Mr. Finberg to propose the Subcommittee’s continued consideration of these interrelated issues focusing first on reviewing and perhaps redefining the minimum level of legal services to be encompassed in a chapter 13 case on a “no-look” fee basis.

The Subcommittee also continues to discuss: (a) requiring lenders/servicers to submit/file their signed final loan modification papers when they have actively participated in the loss mitigation program; (b) D.N.J. LBR 3015-1(b) and whether it complies with the requirements of due process in light of the Third Circuit’s Mansaray-Ruffin decision; (c) a standard form of loan modification order; and (d) amending D.N.J. LBR 3002.1-1 to allow HELOC lenders to send payment change notices directly to borrowers and counsel, with summary of changes filed on the docket every six months.

**IV. Local Rules Subcommittee Report** - Catherine Youngman, Chair, reported that the Subcommittee has finalized its recommended change to the Local Rules and Guidelines with

respect to Minimum Practice Standards for Consumer Chapter 7 Debtor's Counsel and Use of Outside Contract Counsel. Chairman Mackin and Robert Schneider provided a detailed overview of the Subcommittee's final proposal. After open discussion, and without amendments offered, Chairman Mackin moved for a vote to present the proposal to the Board of Judges. The vote was 12 in favor; 3 against, and 1 abstention. Motion carried by majority vote. The proposed rule will be submitted by the Chairman to the Board of Judges.

Ms. Youngman also reported that the Subcommittee was looking at noticing issues between FBR 2002(a)(3) and notices of settlement. Ms. Naughton reported that there is no conflict or inconsistency and that the Clerk's Office is observing all appropriate time frames.

Ms. Youngman also reported that the Subcommittee was looking at the process for Fee Applications for mediators. The Subcommittee was informed that the Board of Judges would be addressing the issue and that the Subcommittee could remove this matter from its future discussion agenda.

The Subcommittee is also reviewing Local Rule 9015(b) to determine whether an amendment fixing a time limit for parties to consent to jury trials in the Bankruptcy Court would be necessary or helpful. Time did not permit further presentation of this matter with discussion to be tabled until the next LAC meeting.

**V. Legislative Subcommittee Report** – With the adoption of the new Federal Bankruptcy Rules and Forms, it was agreed between Chairman Mackin and Subcommittee Chair Brian Nicholas, that there was presently little reason for this Subcommittee's continued existence. After brief membership discussion, Chairman Mackin proposed this Subcommittee's dissolution. Unanimous vote in favor of Chairman's recommendation. Subcommittee dissolved.

**VI. Website/Social Media Subcommittee Report** - No report. Chairman Mackin will discuss with Subcommittee Chair David Beslow this Subcommittee's dissolution.

**VII. Newsletter Subcommittee Report** - Carrie Boyle, Chair, reported on the most current issue of the newsletter, The Absolute Priority, which featured a fantastic article on the Chief. The issue also has a very interesting article on the artwork in the courthouses, authored by member Anne Cantwell. Member Shoshana Schiff noted that Ms. Boyle deserved special recognition for her efforts in organizing the newsletter and its contents. There was general membership discussion about the method of electronic circulation to ensure that future editions would be transmitted to the Bankruptcy Judges as well as to all e-filers. The Subcommittee is already hard at work on the next edition and Ms. Boyle noted that, as always, the Subcommittee welcomes stories, items, news, and ideas for inclusion from the bar at large.

**VIII. Ad Hoc By-Laws Review Subcommittee Report** - Chairman Mark Hall submitted proposals for technical and substantive amendments after the Subcommittee's comprehensive By-laws review. The proposals were circulated to all LAC members by email

more than ten days prior to the March 23, 2016 meeting, as required by the existing By-laws. The substantive proposals provide for a new liaison position to be occupied by one of the standing chapter 13 trustees, as selected by the Chief Judge, and a new liaison position for a representative selected by the New Jersey Federal Bankruptcy Association. The chapter 13 trustee liaison shall be designated as a permanent member of the Consumer Bankruptcy Committee. The proposals also suggest reorganization and renaming some of the existing Subcommittees to reflect the LAC's current needs.

Discussion was held and certain non-substantive amendments were offered and agreed to by the Subcommittee. Substantive questions were raised as to where certain matters would be steered that might affect both commercial and consumer issues. Chairman Mackin noted that it would be the LAC Chair's decision as to how to apportion work between Subcommittees and that in certain instances it may be proper to refer the same issue to more than one Subcommittee for consideration.

An amendment was offered to prohibit the appointed chapter 13 trustee liaison from serving as chairperson of the Consumer Bankruptcy Subcommittee, which was agreed to by members and adopted by the Subcommittee.

Upon completion of discussion, Chairman Mackin proposed several distinct votes on the proposed By-laws amendments. Members were reminded that By-laws amendments required approval by a 2/3 vote.

The Chairman moved that the LAC approve the technical, grammatical, and stylistic amendments to the LAC By-Laws as set forth in the report of the Ad-Hoc By-Laws Subcommittee. Vote 18\* in favor, 0 opposed, 0 abstain. (\* includes 4 affirmative proxy votes given to Chairman Mackin.). Motion carries by requisite 2/3 vote. Subcommittee Chair Mark Hall directed to make the approved technical, grammatical and stylistic amendments as adopted.

The Chairman moved that the LAC approve the substantive amendments to the LAC By-Laws as set forth in the report of the Ad-Hoc By-Laws Subcommittee, as amended. Vote 18\* in favor, 0 opposed, 0 abstain. (\* includes 4 affirmative proxy votes given to Chairman Mackin.). Motion carries by requisite 2/3 vote. Subcommittee Chair Mark Hall directed to make the substantive amendments as adopted.

**IX. Board of Judges Update** - Judge Gravelle reported that the Judges are reviewing numerous issues in connection with motions to reinstate dismissed cases. Judge Gravelle provided the LAC with a memorandum outlining issues implicated in such motions, which are, in reality, motions to vacate orders which must comply with Fed.R.Civ.P. 60. Judge Gravelle asked that the LAC provide the Board of Judges with recommendations for local practice procedures and forms. Chairman Mackin simultaneously submitted the matter to the Chairs of the Commercial Bankruptcy/Chapter 11 Subcommittee, the Consumer Bankruptcy Subcommittee, and the Local Rules Subcommittee. Each Chair is to discuss the issues with their

respective Subcommittee members and thereafter confer with the Chairman for further consideration.

Judge Gravelle also advised the Board of Judges will amend the appropriate Local Rules to: (a) eliminate a mediator's need to file a fee application; (b) eliminate a mediator's need to file an acceptance of appointment; and (c) require a mediator to file a written report not later than seven days after the mediation's conclusion.

**X. Rules Committee Update** – Chief Judge Ferguson reported continued review of the Local Rules for inconsistencies. Technical amendments will be submitted in August 2016. After conferring with Chairman Mackin, Judge Ferguson agreed that since the separate Local Rules Revision Committee's main job had been completed last year there is no need for separate updates from this body. The LAC will receive future Local Rules updates as part of the Board of Judges Report.

**XI. Clerk's Report** - Jim Waldron reported Ed Gordon has retired. Tom Walsh has replaced him. Mr. Waldron and Mary Shashaty will also be retiring, so the Clerk's Office is in for a lot of change in the near future. Mr. Waldron reported that filings were slightly up. Mr. Waldron reported that Mo Wong was appointed to the National Committee on Workload and Work Measurement Formula. The Clerk's Office continues to work on allocation of cases and judges as well as the lines between the vicinages.

**XII. Liaison's Reports:**

A. **District Court** - No report.

B. **US Trustee** - No report.

C. **IRS** - Eammon O'Hagan's concerns were addressed earlier in the evening with the adoption of the amendment to D.N.J. LBR 3007-2 to include a reference to D.N.J. LBR 9014(b).

D. **New Jersey Attorney General** - Ramanjit Chawla reported that her office has new letterhead with the new Attorney General Robert Lougy.

E. **New Jersey State Bar** -The Bench Bar will be April 8th 2016.

**XIII. Old Business**

A. Several technical Subcommittee reorganization motions proposed by Chairman Mackin unanimously approved. Motions carry.

B. Motion by Chairman Mackin to adopt the Local Rules Subcommittee's recommendation from last meeting that no action should be taken on the question of whether the Local Rules should be amended to allow a representative of 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. Vote 13 in favor, 1 opposed, 0 abstain. Motion carries.

C. Motion by Chairman Mackin to adopt the Local Rules Subcommittee's recommendation from last meeting that no action should be taken on the question of whether the Local Rules should be amended to address the manner in which trustees treat 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. Vote 14 in favor, 0 opposed, 0 abstain. Motion carries.

D. Motion by Chairman Mackin that a new Local Forms Subcommittee be constituted with the duty of drafting proposed local practice forms, as needed or requested by the Board of Judges, the LAC or by the Chair of any of the permanent Subcommittees. Vote 14 in favor, 0 opposed, 0 abstain. Motion carries.

E. Motion by Chairman Mackin that the members of the now dissolved Legislative Subcommittee be assigned as members of the newly created Local Forms Subcommittee. Vote 14 in favor, 0 opposed, 0 abstain. Motion carries. Brian Nicholas designated as Chair of the Local Forms Subcommittee by Chairman Mackin.

**XIV. New Business** – None other than as set forth in the Subcommittee and Liaison Reports.

**XV. Next Meeting Date** - June 8, 2016

**XVI. Motion to Adjourn.** Motion made and seconded. Unanimously approved. Meeting adjourned.