

## **2014 BROWN BAG LUNCHEONS**

This year's brown bag luncheon were recently held in both Omaha and Lincoln. A luncheon will be held in North Platte next time the court is there for trials. Participating in the luncheons were Judge Saladino, the bankruptcy court staff, and attorneys and paralegals from numerous law firms. For the Lincoln luncheon, Judge Shon Hastings from the District of North Dakota was also in attendance. For those who were unable to attend, the topics of discussion were as follows:

### 1. Transition to Single Judge District.

Judge Saladino discussed the court's transition to a single judge district following Judge Mahoney's retirement. Bankruptcy judges are appointed by the Court of Appeals. The District of Nebraska is authorized to have two bankruptcy judges. However, the Eighth Circuit has determined that due to decreased filing levels, it will not appoint a second judge at this time. As soon as filing levels and work load warrant a second judge, Judge Saladino will request that the vacant position (Lincoln) be filled.

That being said, Judge Thad Collins, from the Northern District of Iowa, and Judge Shon Hastings, from the District of North Dakota, will handle cases in which Judge Saladino has a conflict with or needs to recuse himself from a case. Also, Judge Hastings, is considering taking a small percentage of cases from this district.

A few differences or changes you may notice are that Judge Saladino likes to keep things moving, with fewer delays and continuances, and will be more likely to require live testimony when having to decide an issue on conflicting affidavit evidence or if objections to affidavit testimony are raised.

Judge Saladino pointed out that the only way we are able to handle the workload of this district (presently, over 8400 open cases of which approx. 7000 are Chapter 13) with a single judge and a small clerk's staff is through the various efficiencies that were put in place by Judge Mahoney and the cooperation and participation by the bankruptcy bar. The court's objective is to run smoothly and efficiently for both the court and the attorneys, and input from attorneys regarding the court's procedures is always welcome.

### 2. Bankruptcy Practice Committee.

The court has procedures and rules in place that exist for the benefit of the court. However, the court recognizes that these procedures and rules have an effect on attorneys of which the court may not be aware. So, upon the suggestion of Patrick Turner, the Bankruptcy Practice Committee was formed. The mission of this committee is to improve the administration of bankruptcy cases in the District of Nebraska.

This year's committee membership is comprised of three court personnel (Judge Saladino, Eva Roeber, and Donna Soukup), three trustees (Jerry Jensen, Kathleen Laughlin, and Rick Lange), the chair of the Bankruptcy Section of the OBA (Erin McCartney), two attorneys of her choosing

(Matt Eck and Tom McGuire), and special member Patrick Turner. Committee members serve for a one-year period. The first meeting of this committee was held on March 7, 2014, and the minutes will be, or have been, posted to the court's website. If anyone has any comments or suggestions regarding anything related to administration of bankruptcy cases, feel free to contact any member of the Bankruptcy Practice Committee.

At this time, the committee is undertaking a revision of the court's Local Rules. The committee was asked to review the rules and provide input, suggestions, or changes. As soon as this endeavor has been completed, the court will post the revised Local Rules. It is the court's intent to streamline the Local Rules by eliminating excess and duplicative language, including any language that may already be included in the Code. Also, several appendices have been removed. One addition to the Local Rules is Rule 3015-2, which is discussed in more detail below.

### 3. Local Rule 3015-2.

The changes to Rule 3015-2 have already become effective. Because of funding cutbacks, the court's staffing levels are down 24% from just a few years ago. Typically, Chapter 13 plan objections are scheduled for hearing and then continued on multiple occasions. This means that the court staff must handle the case each and every time there is a continuance or a new scheduling. In an effort to streamline the process, Rule 3015-2 was put into place. With this new rule, the court is not going to touch the case for the first 60 days after responses to plan objections are filed. Most of the time, plan objections get worked out. This 60-day period gives the attorneys and trustee the time to work out disputed issues and get a stipulated confirmation order or an amended plan on file.

In the event disputes cannot be worked out, either confirmation will be denied at the end of 60 days, or one of the parties will file a certification and request for trial. Attorneys should read the certification carefully. The court takes the representations seriously, and these certifications should not be taken lightly by attorneys. When a trial is set, it will not be continued except in extraordinary circumstances.

### 4. New Fee for § 363(f) Sales Free and Clear of Liens.

On December 1 of 2013, a new filing fee was established for section 363(f) sales free and clear of liens. For the record, filing fees are NOT set by this court—They are dictated by Washington. So, we did not create this fee! In any event, Judge Saladino's interpretation of this fee is that if property has a lien on it before sale, and the buyer is not taking it subject to the lien, then the sale is free and clear, and the fee is due. In CM/ECF there are two events to choose -- § 363(f) motion to sell and § 363(f) sales free and clear of liens. Selection of § 363(f) sales free and clear of liens will trigger the \$176.00 fee to be paid. Prompt payment of the fee upon filing will avoid delays in obtaining your court order.

### 5. Tips and Information from the Court, Attorneys, and United States Trustee.

A couple of recent cases of interest were discussed: *See, In re Cardwell*, BK 13-40623 (decision of September 12, 2013, Fil. #55, regarding lien avoidance on a tool of trade) and *In re Schlehuber*, BK 12-82391 (converting an individual chapter 7 debtor with primarily business debts to chapter 11, affirmed by BAP, Fil. #123 and 8<sup>th</sup> Cir., Fil. #146).

Attorneys participating on telephonic hearing were reminded to also listen while presenting their argument as Judge Saladino may want to ask questions and may need to interrupt.

Included in the appendices to the Local Rules is current Appendix “M,” (which, in the near future, will become Appendix “K”) which contains the docketing standards for evidence. In particular, evidence should not be attached to notices, motions or other filings. Instead, each item of proposed evidence should be separately filed as its own filing number and linked to the correct document. Any supporting documents to the item of evidence to be offered may be filed as attachments to the evidence, but must have an informative description.

Diane Zech informed the groups that effective June 1, 2014, filing fees will increase—substantially in some instances. The new filing fees will be posted to the court’s website.

Jerry Jensen reported that even though filings are down, bankruptcy fraud has increased and is being taken seriously by the US Attorney. Also, the UST has re-commenced its debtor audit program.

Don Swanson noted that in his mediation experience, many disputes may be multi-faceted and sometimes require more than one session to reach an agreement.

The court would like to thank all those who participated in this year’s brown bag luncheons.