

MINUTES OF THE
BANKRUPTCY PRACTICE COMMITTEE MEETING
March 18, 2021 – Zoom Conference

The meeting commenced at 11:00 on Thursday, March 18, 2021, via Zoom conference. Attendees included Chief Judge Thomas Saladino, Judge Brian Kruse, Joan Kramer, Eva Roeber, Lisa Smith, Deb Kalamaja, Jerry Jensen, U.S. Trustee; James Overcash; Kathleen Laughlin; Nick Buda; Andrew Biehl; Patrick Patino; David Pederson; Donald Swanson, David Koukol; and Sam Turco.

Chief Judge Saladino called the meeting to order and introduced new committee members David Koukol, Chair of Bankruptcy Section of the NSBA, and Sam Turco as the new attorney member. Each will serve two-year terms.

Approval of the Minutes from July 31, 2020

The Minutes were approved. Follow-up items from the minutes were discussed.

Follow-up Items

2020 8th Circuit Judicial Conference:

The 2020 8th Circuit Judicial Conference did not take place due to the pandemic. The 2021 8th Circuit Judicial Conference is scheduled on October 27, 28, and 29, 2021, in Colorado Springs, Colorado. Since the 2020 conference did not take place, attorneys interested in attending are invited. The Federal Practice Committee is hoping to put together some way to financially assist attorneys in attending the conference. If anyone is interested, they should contact someone on the Federal Practice Committee.

Zoom Conferencing:

Judge Saladino informed the committee the court is conducting live testimony hearings by Zoom and asked if members of the committee have or have heard any feedback from bankruptcy attorney practitioners on the use and effectiveness of the Zoom conferencing. Members of the committee expressed that it is going well. Dave Pederson asked about whether Zoom offers the functionality of breakout rooms so attorneys and their clients can be placed in a breakout room to visit privately. Judge Saladino confirmed the conferencing tool Zoom for Government does offer the breakout rooms. Judge also explained if a party desires live testimony at a hearing, they should first receive confirmation from the other parties and then contact the courtroom deputy before the scheduled hearing. If all parties do not agree, then the filing of a formal motion will be required.

General Order 20-03:

James Overcash reported General Order 20-03 is going well, but anytime there is a change in procedure there will be a few adoption issues. He indicated when an amended plan is filed without the track changes the trustee is trying to file his objection early and include reference to GO 20-03 so the debtor can respond. The amended plans filed with a version showing the changes have been helpful to the trustee, especially when there are only one or two small objections needed to be addressed.

U.S. Trustee SubChapter V Presentation in North Platte:

The U.S. Trustee will be rescheduling the SubChapter V presentation in North Platte. Judge Saladino and Judge Kruse will participate. The U.S. Trustee will provide more information once a date, time, and place have been selected.

Report from NSBA Bankruptcy Chair – David Koukol

David Koukol is coordinating with Jennifer Hiatt of the NSBA to schedule a Zoom Brown Bag Luncheon. Jennifer Hiatt is going to run this by the judges for their participation. Date selection and topics are in the works.

Dave reported Jennifer Hiatt has been approached by Patrick Turner for a two-hour presentation at the October 2021 NSBA Annual Meeting for the Bankruptcy Section. The session will focus on the new small business bankruptcy arena and the developments over the last 12 to 15 years. Mr. Turner has agreements for general involvement from Jerry Jensen and James Overcash. Both Nebraska bankruptcy judges will be asked to participate. Mr. Turner will be working with this group and others to develop a panel, topics of discussion, and timing. Jennifer Hiatt expressed to Dave the annual meeting in October is planned to be a live event, however, with the pandemic being what it is, that could change.

SubChapter V – Appointment of a committee to create a status report

Judge Saladino reported he and Judge Kruse have had several SubChapter V cases. The court is required to have a hearing within 60 days of the case filing date. The status reports filed by the debtors have been all over the map and the hearings have not been productive. Because of the inconsistent information in the status reports the judges would like to establish a sub-committee to develop a local status report form. Judge Kruse will chair the sub-committee. Other sub-committee members will include the SubChapter V trustees James Overcash and Don Swanson, Jerry Jensen, Patrick Patino, and David Pederson. Judge Kruse will schedule a Zoom conference soon.

Mediation Update – Don Swanson

Don reported on how the pandemic has revolutionized everything and made things that were before unthinkable, now possible. Zoom conferencing has created major efficiencies of not only travel and expenses but how time is utilized. In the bankruptcy realm, there has been very little, if any, mediation activity.

Don is a member of the Mediation Committee of the ABI. The committee is focused on the facilitation of a consensual plan as a trustee's statutory duty in SubChapter V bankruptcy cases and developing general practices for the trustees. The committee recently surveyed the mediation and reorganization committees of the ABI on that subject with a report to come out later this year.

Report from Clerk of the Court – Eva Roeber

Lisa Smith explained the New Form 4100S – Supplemental POC for CARES Forbearance Claim which allows for eligible creditors to file supplemental proof of claims for Cares Act forbearance in Chapter 13 cases. The document is filed on the docket as well as the claims register. Eva indicated that form, like some of the other Cares Act provisions relating to Sections 501, 502, and 1329 is set to sunset one year to the date enacted which would be around December 27, 2021. There has been some discussion about potentially pushing that deadline out.

Eva reported Nebraska bankruptcy filings were down last year over the previous year overall about 20% and nationally down about 40%. The mix of the filed bankruptcy cases has changed.

Eva informed the committee both the Lincoln and Omaha bankruptcy courtrooms will have major infrastructure upgrades with the most up-to-date technology. The project will take place within 12 to 18 months.

Other Business

Chapter 7 Trustee Representative on Committee:

Judge Saladino indicated Mr. Myers has completed his term as the Chp. 7 trustee representative on the committee. Jerry Jensen will appoint one of the standing Chp. 7 trustees to fill the vacancy.

Cash Collateral and DIP Accounts:

David Pederson expressed his concern about debtors establishing cash collateral and DIP accounts out of state and the problem it presents in trying to subpoena records. Dave inquired if

there could be a local rule requiring the accounts to be accessible in the state of Nebraska through a local bank branch.

Jerry Jensen indicated he was not aware of any regions or jurisdictions requiring the depository to have a local branch. The requirement of the U.S. Trustee Program is the debtor must sign an authorized depository agreement for each region they want to have bank accounts. Jerry suggested perhaps the Chp. 12 trustee could inform Chp. 12 debtors they must open the DIP account at an authorized depository, or an approved depository by the local UST's office. This way, there is an authorized depository agreement in place where parties have agreed to cooperate with the UST's office in providing information. Having that requirement may make it easier for the creditor's counsel to receive information regarding bank accounts if the debtor elected to use a bank that didn't have a branch location in Nebraska.

Mr. Overcash stated he has not had a problem in receiving bank account information from parties and typically the banks have been cooperative. It is the trustee's view that debtors must cooperate and provide the bank records and if they are not going to do that then a motion should be filed and brought before the court. Mr. Overcash also expressed parties can request him to retrieve the information on their behalf.

Judge Saladino suggested if it becomes a problem in a specific case it can be taken up by motion with the assigned judge. However, if it becomes a problem overall, then perhaps the trustees and Mr. Jensen can recommend a procedure and bring it to the committee.

Local Rule 3007-1(C):

Nick Buda brought a matter to the committee's attention on behalf of his practicing partner, Brandon Tomjack, inquiring whether the present procedure of filing a supplemental or amended claim after the claims bar date could be streamlined. The local rules require that a motion and a 9013-1 notice is required when filing a supplemental or amended claim after the claims bar date.

Judge Saladino will follow up with Nick and Brandon regarding past actions related to the amended claim issue.

The meeting adjourned at 12:04 p.m. The next meeting will be in the fall. If issues arise before that meeting, they can be discussed by email.