

MINUTES OF THE  
BANKRUPTCY PRACTICE COMMITTEE MEETING  
March 30, 2022  
Zoom Conference

Chief Judge Saladino called the Zoom conference meeting to order at 12:01 p.m. on Wednesday, March 30, 2022. Attendees included Chief Judge Thomas Saladino, Judge Brian Kruse, Joan Kramer, Clerk of the Court Eva Roeber, Lisa Smith, Deb Kalamaja, Assistant U.S. Trustee Jerry Jensen, Chapter 13 Trustee Erin McCartney, Chapter 7 Trustee John Stalnaker, NSBA Chair David Koukol, Sam Turco, Donald Swanson, Trev Peterson, Becky Abell Brown, Alexis Davis, Matt Pederson, and Katie Dey Lindsay for Chapter 7/12 Trustee James Overcash.

Judge Saladino introduced and welcomed new committee members. Trev Peterson, Becky Abell Brown, and Alexis Davis will each serve a two-year term. Matt Pederson will replace Dave Pederson on the committee as an ad hoc member representing greater Nebraska. Erin McCartney, the new Chapter 13 Trustee, will serve on the committee, replacing Kathleen Laughlin, who retired on December 31, 2021.

Judge Saladino explained Bankruptcy Practice Committee meetings are where bankruptcy practice attorneys can raise issues, bring suggestions, and changes for discussion and possible implementation.

**Approval of Minutes from Committee Meeting October 15, 2021**

October 15, 2021, committee meeting minutes will be modified to reflect the SubChapter V Status Report Form now, Appendix D in the revised local rules, and the Rule 2004 Exam Form is located in Appendix C. The minutes were approved subject to the changes and will be posted on the court's website.

**Report from NSBA Bankruptcy Section Chair**

Nebraska State Bar Association Bankruptcy Section Chair, Dave Koukol, thanked the new members of the committee for volunteering to serve.

Dave reported the NSBA Bankruptcy Law Section and the Agricultural Law Section plan to conduct a joint-section seminar at the annual meeting in October 2022. David Bracht, Chair of the Agricultural Law Section, has polled his board, and members agreed with the proposal. The Ag Section is interested in presenting a seminar on statutory farm liens and other unique agricultural aspects of providing agricultural credit. Other possible topics are the interplay between ag and bankruptcy with recent world events and how worldwide changes may affect credit lending, farmers, economics, and important world events impacting agriculture and bankruptcy. Bankruptcy Practice Committee members were asked to provide Dave with topics for the two-hour seminar. Judge Saladino suggested involving the

Chapter 12 Trustee, James Overcash, for his input. Trev Peterson volunteered to assist with the seminar.

### **SubChapter V Trustee Fees (Payment)**

Judge Saladino expressed the court's concern with Subchapter V trustees receiving payment for their fees if the bankruptcy case fails. The statute provides that Subchapter V trustees are to get paid, but there is no mechanism for paying the trustee if the case falls apart. Jerry Jensen reported some bankruptcy courts have adopted local rules or general orders requiring debtors to pay a monthly retainer payment to the Subchapter V trustee. The funds are maintained in the trustee's trust account during the term of the Subchapter V case. If the bankruptcy case fails, is dismissed, or converted, the money in the trustee's trust account may be used to pay the Subchapter V trustee's fees. Generally, the payments are small so as not to burden the Subchapter V debtor with a large monthly payment.

### **U.S. Trustee SubChapter V Presentation in North Platte Update**

Jerry Jensen reported the SubChapter V presentation scheduled in North Platte before the pandemic is likely to be rescheduled in late spring or early summer. In addition to the Subchapter V presentation, the seminar will cover chapter 13 cases and provide an opportunity for the western Nebraska bankruptcy bar to meet Judge Kruse and Erin McCartney. Jerry is looking for venues to hold the seminar and a reception afterward. A request has been made for the NSBA Bankruptcy section to host the reception. Update to minutes: The SubChapter V presentation is rescheduled for June 9, 2022, in the City Hall in North Platte. NSBA Bankruptcy Section will pay for a reception afterward.

### **Mediation Update**

Don Swanson reported that bankruptcy mediation currently taking place is the facilitation role of the SubChapter V trustee. An ABI survey of bankruptcy practitioners showed the facilitation role of the SubChapter V trustee is going well. Don, a SubChapter V trustee, indicated the facilitation role is new, and Sub V trustees are learning as they go. Don said one of the challenges in the trustee role is akin to the mediation theory in that every mediator must be neutral with no involvement. However, every Sub V trustee appointed, and facilitating does have a stake in the case. As a Sub V trustee, you are helping facilitate a consensual plan and taking a substantive position on the SubChapter V plan. Finding a balance of how that works, getting it done, and getting the trustee's fees paid are all part of the process.

### **Nebraska Commission on Uniform State Laws/Assignment for Benefit of Creditors**

Don announced he was named to the Nebraska Commission on Uniform State Laws and is looking at the Nebraska Statute on Assignment for Benefit of Creditors (ABC). Don explained in 1877, Nebraska had an ABC law, which was repealed in

1945. At the first Commission meeting, Don suggested there is a need for an ABC law. Don reported there was much discussion on ABC law. The Commission seemed to think the bankruptcy court would not be in favor of the law because it would be taking work away from the court. Don requested feedback from the Bankruptcy Practice Committee members concerning an ABC law.

### **Loan Modifications**

After the report on mediation, Sam Turco reported he was contacted by a representative from Stretto Company regarding a mortgage modification mediation program. Stretto requested Sam to bring the mortgage modification mediation program to the court's attention to see if the Nebraska Bankruptcy Court would consider establishing a local rule dealing with mortgage modification mediation. Stretto is seeking local rules from courts nationwide to mediate loan modifications. Stretto has been successful in certain jurisdictions in obtaining local rules for that purpose. Sam will seek more information from Stretto and provide it to the committee.

Erin reported she had experience with the mortgage modification mediation program. She indicated there are pros and cons to the program. Some companies have been successful and in business for a long time. The Stretto Company has created a line of business for themselves where they collect loan modification documents. They know what the various lenders require and organize the application process to make it more effective for the debtors to get their applications approved. The mediator is merely facilitating communication and does not meditate on any deals.

Judge Saladino said it would be interesting to know what the service provided. Is it a profit center for one entity, or is it something that might work as a program? Obviously, the big issue is how the mediator gets paid? Erin indicated in the jurisdictions she previously practiced, the fee was split between the creditor and the debtor, and the mediator received a small fee.

Eva mentioned she recently received communication from the Arkansas Bankruptcy Court about this same kind of program. The company has been reaching out to bankruptcy court clerks nationwide to see if courts are interested in establishing a local rule for dealing with mortgage modification mediation.

Judge Saladino tabled this item for discussion at the next committee meeting in the fall.

### **HUD Claims**

**Piggybacking on loan modifications.** Sam Turco reported an increase in loan modifications where there are partial HUD claims. Judge Saladino acknowledged it usually is a HUD mortgage. Generally, creditors do not receive notice of the loan

modification. It is left to the court to determine whether the notice is proper. Generally, there is no impact on the plan itself because the debtor continues to pay the loan outside the plan payments. After discussion, the Judges decided notice will be required to all parties or limited notice under 9013-1 as opposed to automatically approving the loan modifications and partial claims without notice. Requiring notice will provide the Chp. 13 Trustee the opportunity to request information and file an objection if needed.

### **Report for Clerk of the Court**

#### **Update on FRPB 9036(b)(2)(B)**

Eva Roeber provided an update on FRPB 9036(b)(2)(B) effective December 1, 2021. The rule change is for High-Volume Paper Notice Recipients. High-volume recipients are defined as recipients receiving 100 or more paper notices in a single month. Recipients must register for electronic notice within 45 days of the Bankruptcy Noticing Center's notification that the cap has been reached. If compliance is not met, a second letter is sent to the judge. The judge will decide on the action to be taken for registration non-compliance. Eva said there was feedback from judges to be part of the decision-making if there is non-compliance with registration. Eva clarified this rule change is only for attorneys, or attorneys who represent creditors. The rule does not apply to high-volume creditors. Creditors receiving high-volume paper notices from either the court or other filers cannot sign up for electronic notice.

### **CARES Act**

The CARES Act provisions expired on Sunday, March 27, 2022, at midnight. Official forms or director forms reverted to pre-CARES Act forms. There has been some talk nationally the CARES Act provisions may be retroactively reinstated. For that reason, the court's general order has not been vacated.

### **Triennial Adjusted Dollar Amounts**

The triennial adjusted dollar amounts will go into effect on April 1, 2022. An email was sent to the bankruptcy court's email service list providing a list of the updated Official Forms and Director's Forms. The court is aware when local changes are made to the Official Forms or Director's Forms it confuses attorneys and their staff. For that reason, the court makes every attempt not to modify the forms. The only local change is to Director's Form 2830 "Chapter 13 Debtor's Certifications Regarding Domestic Support Obligations and Section 522(q)" located in Appendix L in the local rules. Sam Turco acknowledged that bankruptcy preparation software providers update the forms and push out the updates to their customers.

### **Chp. 7 Trustee Fees**

Eva announced the court is waiting for the Department of Justice to move money into the court's new fund for additional payments to the Chapter 7 Trustees. For several years the trustees have been paid \$60.00 for a Chapter 7 case. The

anticipation is the trustees will receive an additional \$60.00 per case, or double what they have received in the past.

### **Zoom 341 Meetings**

Eva asked Jerry Jensen about 341 meetings by Zoom. Jerry announced that 341 meetings will be transitioning from telephone to Zoom. There currently is a regional pilot program conducting Zoom 341 meetings, and eventually, Zoom will go nationwide once licenses are procured for every trustee in the nation. Telephonic 341 hearings will continue until every state goes to Zoom hearings. Zoom hearings will apply to all chapters except for regular Chapter 11 cases. Generally, there will be no more in-person 341 meetings, however, the trustee or other parties will have the right to seek an in-person hearing after the initial Zoom hearing.

### **Other Business**

#### **Stipulated Confirmation Orders/Chp. 13 Cases**

Sam Turco reported attorneys for debtors are interested in developing a new local rule to return to submitting stipulated confirmation orders in Chapter 13 cases. Sam will seek input from the Chapter 13 Trustee for guidelines allowing for entry of stipulated confirmation orders in cases where no creditors are put at a disadvantage and where common problems such as funding can be resolved. This item will be added to the agenda for the next meeting. If a proposal is reached, it can be circulated to the committee ahead of time.

#### **Brown Bag Luncheons**

David Koukol asked the Judges if the Brown Bag Luncheons can be resumed, and if so, should they be initiated by the Bankruptcy Practice Committee or the Bankruptcy Section of the NSBA. Judge Saladino indicated the time is right to begin luncheons, and the court can host them, although, it may be slightly more cumbersome and difficult hosting in the federal courthouse from a practitioner's perspective due to parking, security, and the inability to bring in certain items. Judge Saladino mentioned the bankruptcy section may want to take over hosting the luncheons. Dave will poll the bankruptcy section and follow up on the brown bag lunches.

The meeting adjourned at 1:04 p.m. The next meeting will be in the fall of 2022. If issues arise before that meeting, they can be discussed by email.