

MINUTES OF THE
BANKRUPTCY PRACTICE COMMITTEE MEETING
October 15, 2021
Embassy Suites Conference Center - LaVista, Nebraska
(Approved March 30, 2022)

The meeting commenced at 1:05 p.m. on Friday, October 15, 2021, at the Embassy Suites Conference Center, LaVista, Nebraska, following the Bankruptcy Section Meeting of the NSBA. 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 Kathleen Laughlin, Chapter 7 Trustee John Stalnaker, NSBA Chair David Koukol, Andrew Biehl, Sam Turco, and Donald Swanson.

Chief Judge Saladino called the meeting to order and introduced and welcomed new committee member John Stalnaker, Chapter 7 Trustee.

Approval of March 18, 2021, Meeting Minutes

The minutes from March 18, 2021, committee meeting was approved and will be posted on the court's website.

Report from NSBA Bankruptcy Chair

David Koukol reported the Bankruptcy Section would like to resume Brown Bag Luncheons or informal meetings with the court. The Executive Committee consisting of six members of the Section with staggered terms will become the social committee and will begin planning the luncheons taking into consideration the mask mandate(s). The Bankruptcy Section will host a reception for Kathleen Laughlin recognizing her service as Chp. 13 Trustee. The date, time, and place of the reception and brown bag luncheons will be announced later.

SubChapter V - Status Report Form for Subchapter V cases

Judge Kruse reported the subcommittee completed the task of drafting a status report form for Subchapter V cases. The SubChapter V Status Report Form has been implemented by General Order 21-01 and is Appendix D in the local rules. The status hearing must be held within 60 days from the petition filing date.

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

Jerry Jensen reported that when the Department of Justice allows travel, he will plan a seminar for bankruptcy practitioners in North Platte. The seminar will include training on SubChapter V cases as well as other topics. The bankruptcy judges and the new Chp. 13 Trustee will travel to North Platte to participate in the seminar.

Motion to Sell (Free & Clear) – Filing Fee

It has been brought to the court's attention the language in the order entered on motions to sell is confusing. The language is, "This Order does not grant authority for the movant to sell the property free and clear of liens under section 363(f) since it was not docketed as such and the filing fee was not paid." Judge Saladino provided a brief explanation of when a filing fee is due and payable on motions to sell and motions to sell free and clear of liens. Judge Saladino noted he has seen on occasion motions to sell free and clear of liens where the filing fee has been paid, but the motions state the property is not being sold free and clear of liens. The Judge explained if a party is requesting to sell the property and is not being sold free and clear of liens, then the filing fee is not due, and the motion should be filed as a motion to sell. If the correct event "motion to sell" is used, then the event will not prompt payment of a filing fee.

Rule 2004 Exams

Judge Kruse reported he has crafted a new local rule dealing with Rule 2004 Exams (Neb. R. Bankr. 2004-1). A court order is not necessary to conduct an examination under Fed. R. Bankr. P. 2004 if it is within the scope of the rule. Once the local rules have been adopted and implemented it will no longer be necessary to file a motion. A party will file a notice with the court (Appendix C in the local rules) and serve the examinee. An interested party may file a motion for a protective order. The examination will be stayed pending a ruling by the court. See Appendix C in the local rules.

Revised Local Rules

Judge Kruse reported he has completed the revision of the local rules replacing ambiguous, internally inconsistent language, making the rules more concise and less wordy.

Judge Saladino noted in the past counsel for both debtors and creditors have requested a change to claim amendments. Judge Kruse explained that Neb. R. Bankr. P. 3002-1 provides an amended claim will be allowed as filed without a court order only if it reduces the secured amount, the unsecured amount, or both amounts. See Neb. R. Bankr. P. 3002-1 for notice requirements.

The revised local rules will be sent to the ecf service list with a 30-day deadline for the bar to provide comments, after which the rules will be sent to the District Court judges for approval at the next Judicial Council meeting on January 28, 2022. Judge Saladino reminded the members the function and purpose of the Bankruptcy Committee are for attorneys practicing in the bankruptcy court to bring matters and topics to the committee for review.

Sam Turco inquired if the court would consider returning to the practice of entering stipulated confirmation orders. Sam explained traditionally stipulated confirmation orders address funding and do not take away from unsecured creditors and do not adversely affect other parties. Judge Saladino posed the question as to who makes that decision of whether the language in the order affects other creditors? Judge Saladino explained the reason the court stopped the practice of

entering stipulated confirmation orders was because a determination could not be made by the court as to whether other parties were adversely affected by a change through a stipulated confirmation order. Judge Saladino indicated the court is open to suggestions on the matter, but the court must be able to draw a line clearly on what constitutes something that affects other creditors and what does not. If that stumbling block can be overcome, the court may consider entering stipulated confirmation orders.

Mediation Update

Don Swanson reported there is nothing new in mediation and the facilitation role of the Subchapter V trustee is working well.

Kathleen Laughlin Chp. 13 Trustee Retirement

Judge Saladino recognized and congratulated Kathleen Laughlin for 35 years of service as the Chp. 13 Trustee. Jerry Jensen reported the U.S. Trustee has been conducting interviews and a selection process should be completed by year-end. The Bankruptcy Section of the NSBA will be planning a reception for Kathleen.

Report from Clerk of the Court

Eva reported on FRBP 9036 changes effective Dec 1, 2021, for High-Volume Paper Notice Recipients. High-volume recipients are defined as receiving over 100 paper notices in a single month. High-volume recipients must register for electronic noticing within 45 days of the Bankruptcy Noticing Center notification. High-volume recipients who do not register after being notified will no longer receive notices through the mail. The notices will be sent to a mailbox and the recipient will be required to log into the mailbox to access and download the notices. Eva emphasized for those at the 100-paper notice threshold must get signed up as soon as possible.

Other Business

1. Joan Kramer inquired as to the procedure for selecting a new Chapter 13 trustee. Jerry Jensen explained public notice of the vacancy was issued in August 2021 with a thirty-day deadline for submitting applications to the U.S. Trustee. First-round interviews have been completed and the final round of interviews will be scheduled within the coming weeks. Daniel Casamatta will select the trustee who must be approved by the executive office. It is anticipated the new Chapter 13 trustee will be ready to begin by January 1, 2022, and maybe before Kathleen's retirement.
2. Judge Saladino reported the 8th Circuit Judicial Conference will be held in Colorado Springs October 27-29th. Attorneys wanting to attend should contact a member of the Federal Practice Committee.

The meeting adjourned at 1:50 p.m. The next meeting will be in the spring of 2022. If issues arise before that meeting, they can be discussed by email.