

MINUTES OF THE
BANKRUPTCY PRACTICE COMMITTEE MEETING
OCTOBER 26, 2018

The meeting commenced at 1:00 p.m. on Friday, October 26, 2018, via telephone conference.

Committee members in attendance were Judge Saladino, Mary Batcheller, law clerk for Judge Hastings, Eva Roeber, Deb Kalamaja, and Donna Soukup; Jerry Jensen Acting United States Trustee; Kathy Laughlin, Chapter 13 Trustee; James Overcash, Chapter 12/7 Trustee; Don Swanson, chair of the Mediation Committee; Greg Frayser outgoing chair of the bankruptcy section of the NSBA; John Lentz, past chair of the bankruptcy section; David Pederson, Stacy Bach, Patrick Turner, and Sub-Committee member Lisa Billman. Joan Kramer, Lea Wroblewski and Rick Myers were not in attendance.

Agenda Discussions

1. Minutes. Minutes of the March 27, 2018, meeting were approved.
2. Revised Local Rules and Appendix A-P. Committee members had no revisions to the final draft of the rules and appendixes other than to Local Rule 3007 as discussed below. The proposed rules will be sent to the e-serve list for public comments in due course.
 - A. Sub-Committee Comments on Local Rule 3007. Greg Frayser chair of the sub-committee provided a report of discussions the committee had while considering revisions to Local Rule 3007-1. The Sub-Committee limited the scope of its work to an examination of the procedures for amending a timely filed proof of claim following expiration of the claim bar date/confirmation of a plan. It was the consensus of the sub-committee to endorse *In re Carr*, 134. B.R. 370 (Bankr. D. Neb. 1991). The sub-committee recommends the local rule should be clarified to include the *Carr* requirement within Local Rule 3007-1 as a benefit to unrepresented creditors and out of state practitioners. The Sub-Committee drafted proposed language for amending Rule 3007-1. The Sub-Committee's proposal was adopted and Local 3007-1 is revised to include the reference to the *Carr* requirement.
 - B. Interim Compensation Procedures in Chapter 11 Cases. Mr. Turner inquired whether Nebr. R. Bankr. P. 2016-1 could include procedures for interim compensation in chapter 11 cases. With the revised rules being in the final stages the inclusion of procedures for interim compensation in chapter 11 cases is tabled and can be dealt with at a later time with a general order.
3. Volunteer Lawyer's Program Brochure. Ms. Bach and Mr. Lentz provided the committee with an update on the Volunteer Lawyer's Program Brochure. The brochure is near publication.

4. U.S. Trustee’s Seminar on Reorganization for Individual Debtor. Mr. Jensen provided the committee with information on the upcoming free “Chapter 11, 12, and 13 Reorganization for Individual Debtors” seminars in Omaha and North Platte in November, 2018. The seminars are targeted to bankruptcy practitioners who do not normally practice in the chapter 11 and 12 areas, however, attorneys with experience in these areas are also welcome to attend. The seminars will provide an overview of individual chapter 11 cases and chapter 12 cases. Each seminar will include panels of attorneys, the chapter 12 trustee, the chapter 13 Trustee, U.S. Trustee’s office, and Chief Judge Thomas L. Saladino. Nebraska and Iowa CLE credit will be applied for after the seminar. The Omaha seminar is scheduled to take place on November 2, 2018, in the Roman L. Hruska U.S. Courthouse; and in North Platte on November 29, 2018, in the Federal Building.

5. Mediation. Don Swanson provided an update on mediation. Mr. Swanson referred to an ABI study on the reform of chapter 11 and the principle of resolution of disputed matters through an “estate neutral”. Farmers exceeding chapter 12 eligibility requirements and choosing to file bankruptcy will be filing chapter 11 or chapter 7. A mediator in a chapter 11 farm case may be helpful to the parties in seeking creative solutions to avoid results that occurred in chapter 11 farm cases in the 1980s. Discussion was held on the Farm Mediation Act, state statutes, application process, who pays for the mediation, and overall results. It was expressed creditors found the process a nuisance and the process was often ignored by the debtor. Judge Saladino inquired as to whether a chapter 11 debtor can invoke a request for mediation under the Farm Mediation Act after the bankruptcy case is filed. Mr. Pederson is currently engaged in representing creditor clients in farm cases. If mediation takes place he will inform the committee of his anecdotal experience.

6. Other Business.

A. National Rule and Form Changes. Eva Roeber provided an update on changes to Federal Rules of Bankruptcy Procedure and national forms going into effect December 1, 2018.

1. **Fed. R. Bankr. P. 3002.1 Notice Relating to Claims Secured by Security Interest in the Debtor’s Principal Residence.** Changes are to Rule 3002.1(b)(1)(2) and (e).

2. **Fed. R. Bankr. P. 5005. Filing and Transmittal of Papers.**
Electronic filing is now mandatory. An entity represented by an attorney shall file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

3. **Fed. R. Bankr. P. 8006. Certifying a Direct Appeal to the Court of Appeals.**

3. **Form 3180W Order of Discharge in Chapter 13 Case.** The language describing certain debts not discharged in chapter 13 was changed. The revised language is derived from 11 U.S.C. § 1328(a)(3).

B. Composition of Committee. Although this was not discussed at the last meeting, for continuity purposes, Judge Saladino asked that a summary of the composition of the committee be included in the Minutes.

1. Court members (without specific terms) are: Judge Saladino, Judge Hastings, Joan Kramer, Eva Roeber, Deb Kalamaja, and Donna Soukup

2. Trustee members (without specific terms) are: Jerry Jensen, Acting United States Trustee; Rick Myers, Chapter 7 Trustee; Jim Overcash, Chapter 12/7 Trustee; and Kathleen Laughlin, Chapter 13 Trustee.

3. Attorney members are: Greg Frayser (2018 and 2019 as chair and past chair of bankruptcy section), John Lentz (2017 and 2018 as chair and past chair of the bankruptcy section), Stacy Bach (2018 and 2019), Lea Wroblewski (2018 and 2019), Patrick Turner (2017 and 2018).

4. Special Members (without specific terms): Don Swanson--Chair of Mediation Committee, David Pedersen--Western Nebraska interests.

For 2019, the new Chair of the Bankruptcy Section, Jessie Polson, will be added as a member and John Lentz will no longer be a member as he will have completed his term as chair and past chair. Ms. Polson will need to appoint a new attorney member for a 2 year term to replace Patrick Turner whose term is expiring.

C. Eighth Circuit Judicial Conference 2020 – Save the Date. Judge Saladino announced the 8th Circuit Judicial Conference will be held in Omaha on August 4, 5, and 6, 2020. The last time the judicial conference was held in Nebraska was in 2014. Justice Ruth Bader Ginsburg will speak on issues of women's rights. One or more other justices may be in attendance. The conference is for all judges and members of the bar.

The meeting adjourned at 2:15 p.m. The next meeting will be in the spring, however, if issues arise before that meeting, they can be discussed by email.