

BANKRUPTCY PRACTICE COMMITTEE
OCTOBER 7, 2016
MINUTES

The meeting commenced at 12:00 noon on Friday, October 7, 2016, in the jury conference room of the United States Bankruptcy Court. Committee members in attendance from the court were Judge Saladino (with his judicial assistant, Cheryl Belmont), Judge Hastings, Joan Kramer, Donna Soukup, and Eva Roeber; Jerry Jensen from the United States Trustee's office; Kathleen Laughlin, the Chapter 13 trustee, Jim Overcash, the Chapter 12 trustee; Roxanne Alhejaj, Matt Eck, Tom McGuire, Dave Pederson, Don Swanson, Brian Kruse (on behalf of Rick Lange), and special guest Sam Turco. Brandon Tomjack was not in attendance.

Agenda Discussions

1. Minutes. The minutes from the March 18, 2016, meeting were approved.
2. Original signed document vs. "wet" signature document; digital signatures (DocuSign); Rule 9011-1. Local Rule 9011-1 requires documents to contain original signatures, but is silent on the use of digital signatures. The proposed amendment would change the local rule to include digital signatures (that comply with the Nebraska Digital Signatures Act) within the meaning of "original signatures."

Sam Turco spoke to the committee regarding the federal E-Sign Act, which permits the use of digital signatures (although courts have the right to not accept them and to opt out of using them), and the Digital Signatures Act of Nebraska, which also permits the use of digital signatures (here, again, courts are not required to accept digital signatures)

In addition to handouts provided to the committee prior to the meeting, Sam gave a demonstration on using "DocuSign," the only vendor currently registered with the state of Nebraska. The person creating the document will need to have the DocuSign service, which has different billing programs, but the person signing the document only needs to click on it and insert a signature where required. The signed document is encrypted and cannot be altered. A number of safeguards were discussed to ensure that the person signing the document is actually that person, including having that person sign a one-page document authorizing the use of a digital signature. That document could then be presented at 341 hearings or filed on the docket.

Brian Kruse stated that one of the options that DocuSign offers is that you can print out a document, sign it with a wet signature, upload it, and then a digital signature would also be attached to it. This would provide a written signature on a document that could not be edited or altered.

The biggest opponent to the use of digital signatures is the Department of Justice. The DOJ has concerns that the reproduction of signatures would be more likely to happen with electronic signatures, and that verifying a signature would be much more difficult. Authenticity would be required because the FBI will not provide expert testimony on handwriting analysis without original

signatures. In the California case of *Mayfield*, an attorney filed a petition using DocuSign. The judge conducted a hearing and concluded that the use of a digital signature violated the signature requirements – that it was not an original signature – and sanctioned the attorney. Jerry Jensen will investigate the current position of the DOJ and report back to the committee.

3. Proposed Changes to Rule 3015/Rule 3015.1 and the Chapter 13 Plan. A Chapter 13 plan form has been proposed to be part of the national bankruptcy forms. However, a court that does not wish to use the national form must ensure that its local plan complies with and includes various provisions of that national plan – the “compromise.” A subcommittee, consisting of Kathy Laughlin, Roxanne Alhejaj, Matt Eck, and Tom McGuire, was appointed to review the national plan, recommend whether to use it “as-is” or whether to make necessary changes to our local plan, and suggest corresponding amendments to our local rules. It was suggested that John Lentz and John Turco may also want to join the subcommittee.

4. Clerk’s Office Update. Eva Roeber stated that some changes to forms and fees would become effective December 1, 2016. One of the changes on the new national forms pertains to notices of post-petition mortgage fees, expenses, and charges. In addition, there are four rules coming into effect on Chapter 15 or foreign filings. Local Rule 3002.1, regarding noticing, will be updated. There are several amendments, called the *Stearn* amendments, coming into effect regarding core vs. non-core proceedings. Due to an “inflationary adjustment,” fees will be going up, including, but not limited to, fees for amending bankruptcy schedules (increasing from \$30 to \$33), and motions to stay and motions to sell will each increase to \$193. On November 7, 2016, the court is converting to EFT, a new electronic system, that will be used to pay the monthly fees from the court to the Chapter 7 trustees, paying registry fees, and paying unclaimed funds to claimants. In the next month or so, Eva will send out a blast email noting the changes. To review those changes and amendments, the link is: <http://www.uscourts.gov/rules-policies/pending-rules-amendments>.

Roxanne inquired about electronic noticing to creditors, but there has been no significant movement in that regard. However, there are quite a few debtors who have enrolled in the DBN program – a program whereby debtors receive electronically only those documents from the court that they would have received in paper format.

5. Mediation Committee Update. Don Swanson, who is on the leadership team of the mediation committee of the American Bankruptcy Institute, stated that there have been discussions regarding the inclusion of mediation in the federal bankruptcy rules. It appears that within the entire federal government dispute resolution system, the bankruptcy courts slipped through the cracks and most have no mediation rules. This is a long-term project, but that committee is working on rectifying this issue.

The meeting adjourned at 1:25 P.M. Special thanks go out to Judge Saladino for providing lunch. Although not discussed, the next meeting is likely be held in March 2017.