

BANKRUPTCY PRACTICE COMMITTEE
MINUTES
MARCH 6, 2015

Call to Order:

The meeting was called to order by Judge Saladino on Friday, March 6, 2015, at 12:05 P.M., in the jury room of the United States Bankruptcy Court in Omaha, Nebraska. With the exception of Patrick Turner, all members of the Committee were present, including Judge Saladino's judicial assistant, Cheryl Belmont, who served as secretary of the meeting. Judge Hastings and her law clerk, Mary Beth Hegstad, appeared telephonically. Also in attendance was Don Swanson, chairman of the Mediation Committee.

Old Business:

1. New Rules: The new rules regarding the Chapter 13 process seem to be working satisfactorily for everyone. With respect to the new Chapter 13 confirmation process, the court has only had a handful of certifications for trial, and only one trial resulting therefrom. Also raised was the issue of changing the deadline when the certification should be filed until after the proof of claim filing deadline for general creditors. Everyone agreed, and a new General Order 15-01 has subsequently been issued changing the deadline to certify plan confirmation as ready for trial to 70 days after the filing of a response to a plan objection.

2. Chapter 13 to 7 Conversion: A meeting with the United States Trustee is scheduled for April 16, 2015. One of the topics to be discussed will be a uniform system of requirements for Chapter 13 to Chapter 7 conversions.

3. ALC Fees. Judge Saladino stated that he has noticed instances of what appear to be attorneys trying to use the ALC process in a manner that was not intended. Attorneys should be aware that the court and the trustee's office are keeping an eye on these situations. A few examples have been when an attorney representing a single creditor with two judgment liens against a debtor's home files two separate motions to avoid lien (when one motion would be sufficient), and seeks ALC fees for each motion, even though they are virtually identical. Other examples were also given. Judge Saladino reminded the group that the purpose of the ALC fee process is not to provide a windfall, but to fairly compensate the debtor's attorneys without the need to file fee applications.

New Business:

1. Mediation Committee: Don Swanson gave a brief history of the committee, its members, and its efforts. When the issue of using mediation was first proposed, it was met with some skepticism and had a hard time getting any traction. However, over the years the committee has made some efforts to promote the use of mediation and has had some successes. Mediator training takes about 40 hours over the course of several days, and mediators should keep up-to-date training certificates on file with the court.

Mr. Swanson thought perhaps a subcommittee of the Bankruptcy Practice Committee could take the responsibility and opportunity to continue to promote the use of mediation. Eric Adams and Jim Overcash agreed to be on that subcommittee with Mr. Swanson as the chair. One suggestion to promote mediation is to add a new Paragraph 12 to the existing Preliminary Pretrial Order which would include a requirement stating a date by which the parties will have met and discussed mediation. The mediation subcommittee will make a proposal to the full committee.

2. DeBN (Debtor Electronic Bankruptcy Noticing) Program: Eva gave a short history of this program which allows debtors to sign up for electronic notice of court-initiated notices (341 meeting notice, order of discharge, etc.) in an effort to reduce the amount of mail/paper being sent to debtors. In the pilot programs, Los Angeles, where there is a large pro se population, had a great success with this program. In several other areas the program was well-received, but not as well in other areas. An event could be set up in ECF for those debtors who would be interested in receiving notices electronically. However, one downside is that the debtor's email address would be listed in the certificate of mailing. Eva will notify the group when this option becomes available in our district.

A lengthy discussion was also held regarding the National Data Center, its history, its members, and its practices. Although several attorneys like this resource, the Chapter 13 trustee in our district is not a member and for several stated reasons, including privacy concerns, will not become a member. Since the NDC is not an entity established or approved by the Administrative Office of the U.S. Courts, our court also cannot endorse this resource.

3. Late Proofs of Claim. In an effort for Judge Saladino to decide what should be done with proofs of claim that are filed late – should they be allowed, should a hearing be held, should he sustain the trustee's objection, etc. – a lengthy discussion was held. It is the opinion of the Chapter 13 trustee that she must object to claims that are filed late due to precedent in this district and because the Code (Bankruptcy Rule 502(a)) states that a claim is allowed unless it is objected to. Judge Saladino stated he would have to consider this issue further, and feels he should be doing things the way they *should* be done, rather than how they have been done historically.

4. Court Procedures and Video Conferencing. The court will begin working on a document to post on the website that gives answers to procedural and video conferencing questions posed to court personnel. A number of hoops need to be jumped through in order to have a trial using video conferencing for one or more witnesses. While North Dakota has the luxury of courtroom-to-courtroom video conferencing throughout the state, Nebraska does not and needs at least seven to ten days to prepare for, test, and reserve video conferencing facilities.

5. Other: Along the same lines of the court posting procedural issues on its website, it was noted that Legal Aid is transitioning its clients to act as pro se debtors by creating a pro se clinic, conducting evening classroom sessions, and by giving debtors the forms and information on what they need to do and how to file the documents. Judge Saladino stated that he was very appreciative of what Legal Aid does.

6. Date and Location for Next Meeting: A late afternoon Friday in September was suggested, but no definitive date was set. Don Swanson offered his conference room. An email will be sent at a later date advising of the date and location.

Adjournment:

There being no further matters for discussion, the meeting adjourned at 1:40 P.M.