

BANKRUPTCY PRACTICE COMMITTEE
MARCH 18, 2016
MINUTES

The meeting commenced at 3:00 P.M. on Friday, March 18, 2016. Brandon Tomjack, and the law firm of Baird Holm, graciously hosted the meeting. Committee members in attendance from the court were Judge Saladino (with his judicial assistant, Cheryl Belmont), Judge Hastings, 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, and Don Swanson. Also in attendance were the newest members to the committee, Joan Kramer, Brandon Tomjack, and Dave Pederson. Rick Lange was not in attendance.

Agenda Discussions

1. Purpose of Committee, New Members. Judge Saladino stated that the purpose of the committee is to address local rule changes and provide input and suggestions to improve administration of bankruptcy cases and procedures, and to serve as bar association liaison representatives. New members joining the committee are Joan Kramer (Judge Saladino's law clerk), Brandon Tomjack, and Dave Pederson (from North Platte). Judge Saladino asked Dave Pederson to join the committee in order to gain a wider perspective of representation in Nebraska.

2. Local Rule 9019-1 and G.O. 16-01. Local Rule 9019-1 and General Order 16-01 have been implemented regarding notice requirements for relief stipulations. The pertinent language of Local Rule 9019-1 is as follows:

[A] stipulation which provides for relief from the automatic stay which prohibits or conditions the use, sale or lease of property, provides for adequate protection, or use of cash collateral, or for obtaining credit shall not be enforceable between the parties or as against third parties, unless it is approved by the Court after notice and hearing as required by Fed. R. Bankr. P. 4001(d).

General Order 16-01, amending Local Rule 9019-1, will add a second paragraph thereto stating as follows:

2. Notwithstanding the foregoing, the Court may, in its discretion, approve a stipulation or agreement without further notice and hearing if: (i) an underlying motion (such as a motion for relief from stay or a motion to approve) has previously been served on all parties entitled to notice under F. R. Bankr. P. 4001(a) and (d); or (ii) the stipulation or agreement contains an express representation of the Debtor and the Creditor that all parties entitled to notice under F. R. Bankr. P. 4001(a) and (d) have signed the stipulation or agreement.

It was noted that Local Rule 9019-1 and G.O. 16-01 apply to a variety of stipulations covering a wide range of activities. It was also noted that motions to avoid liens, motions to sell free

and clear, and other such motions require service in the manner of service of process, not just mailing to the matrix which may or may not have a good service address. A lengthy discussion was also held regarding notice requirements pertaining to 11 U.S.C. § 523 and 11 U.S.C. § 727 actions; determining whether notices should be filed in the bankruptcy case or the adversary case; and notices regarding objections to claims in Chapter 13 cases. It is important that the objection notice contains the address listed in the proof of claim rather than the address listed on the matrix or certificate of service. All agreed that notice requirements should be a topic for the judges' panel during the June CLE.

3. Form and Fee Changes. On Appendix "M," the dollar amounts on Page 2 have increased from \$155,675 to \$160,375, which amount is subject to adjustment on April 1, 2016, and every three years thereafter with respect to cases commenced on or after the date of adjustment. The committee discussed at length the confusion presented with Appendix "M," including Nebraska exemptions, federal exemptions, exemptions from other states, aggregate amounts, and burial plots. It was suggested that the form could be changed to denote a "Typical for Most Cases" or "Most Common" heading before the appropriate box in Part III, Certification Regarding Section 522(q). The only fee change will be for records ordered from the archive center.

4. Chapter 12 Administrative Fee - Appendix "G." A lengthy discussion was held regarding the \$200 administrative fee received by the Chapter 12 trustee. Although there was no formal order or rule, Judge Mahoney historically ordered an initial payment of \$200 to go to the trustee. If payments do not go through the Chapter 12 trustee or the plan is not confirmed, the trustee's compensation is \$200. *In re Wagner* was discussed with respect to payments being made directly to creditors and the lack of funds to pay the Chapter 12 trustee. However, if there are payments made through the plan, the trustee currently receives "the lesser of 10% of all payments under the plan (or such other percentage as is set by the Attorney General or its delegate from time to time pursuant to the requirements of 28 U.S.C. § 586(e)), or \$4,000.00." Mr. Overcash proposed changing the \$4,000 amount to \$6,000, and adding the following language: "Additionally, the debtor shall make an initial payment to the Trustee of the sum of \$200.00, which shall be retained by the Trustee if the debtor is unable or does not confirm a Chapter 12 plan or applied as directed in a confirmed plan." There were no objections, and Appendix "G" will be amended to reflect these changes.

5. Mediation Update. Mr. Swanson indicated that mediator expirations were coming up and renewal notices needed to be sent out. Through his association with the ABI Mediation Committee, Mr. Swanson learned that there were some pretty innovative uses for mediation, and several cases were discussed. Also Mr. Swanson has started a blog – the name of it is an abbreviation of Mediate Bankruptcy and the tag line is Promoting Bankruptcy Mediation.

6. Other Matters.

A. The Bankruptcy Section seminar will be held on June 22 and 23, and Roxanne has received a lot of interest in it already. The agenda has not been finalized and will be sent

to the bar association when it has been. Approximately 11 hours of CLE will be received, including one hour of ethics. Legal Aid intends to speak at the seminar about its bankruptcy clinic program but, unfortunately, there will be no CLE credit for this as it is for informational purposes. Judges tentatively scheduled to speak are Judge Saladino (Nebraska), Judge Nail (South Dakota), Judge Hastings (North Dakota and Nebraska), and possibly Judge Shodeen (Iowa). The costs for attending the seminar, which are set by the bar association are: \$660 for non-due paying members; \$495 for due paying members; \$20 for law students; and free for speakers. The Bankruptcy Section does have money available for scholarships to attend the seminar.

B. The United States Trustee had no particular updates and stated that filings are still pretty quiet.

The meeting adjourned at 4:20 P.M. Special thanks go out to Brandon Tomjack and the firm of Baird Holm for hosting the meeting and providing snacks and beverages. The next meeting is likely be held in September.