

MINUTES OF THE
BANKRUPTCY PRACTICE COMMITTEE MEETING
MAY 2, 2019 – Omaha, Nebraska

The meeting commenced at 12:00 p.m. on Thursday, May 2, 2019, in the jury conference room of the United States Bankruptcy Court in Omaha. Committee members in attendance were Judge Saladino, Eva Roeber, Deb Kalamaja, Jerry Jensen United States Trustee, Kathy Laughlin Chapter 13 Trustee, James Overcash Chapter 12/7 Trustee; Don Swanson chair of the Mediation Committee; Jessie Polson chair of the bankruptcy section of the NSBA, Laura Troshynski for David Pederson, and Bill Martin for Lea Wroblewski.

Agenda Discussions

1. Minutes. Minutes of the October 26, 2018, meeting were approved.
2. Video Conferencing. Two participants, Laura Troshynski and James Overcash appeared by video conference. The members participating by video conference provided feedback on the process of downloading the necessary applications and plugins, and connecting to the video conference.

Judge Saladino explained the need for moving forward into the digital age of video conferencing. Utilizing video conference technology for trials scheduled one-half day or less, involving one or two witnesses which in bankruptcy court is 90% of the trials, and involving participants outside of Omaha or Lincoln will save the court and litigants time and money. It is a major undertaking and is not feasible to mobilize court staff, court security, secure a venue to hold court, and travel 4–6 hours incurring costs for mileage, meals and lodging for a trial lasting a half day or less. Judge Saladino expressed the need to inform lawyers there is the option for video conferencing which should be factored into discussions with their client. The time and cost of traveling to Lincoln or Omaha for trial can be eliminated when making a determination of feasibility of trial if held by video conference. Large cases with several witnesses will not be scheduled for trial by video conference. In the event it would be cost prohibitive due to distance for a litigant to bring in a witness to testify, the court will consider a formal request for witness testimony from another location.

The court determines whether a case is suitable for trial by video conference based on the pretrial statement: (1) number of witnesses expected to testify; (2) length of trial; and (3) the location of the witnesses and the attorneys.

Prior to allowing a case to go forward with a trial by video conference a “test” is scheduled with the participants who elect to appear by video conference. The test ensures the technology capabilities, connections, and reliable internet speed are sufficient to carry out a video conference. After a successful test has been completed the courtroom deputy advises the parties of the court’s approval. Those parties not electing to appear by video conference will be required to appear in the Lincoln or Omaha video conference room during the trial. The court has found that outstate attorneys utilizing the services of Educational Service Units (“ESU”) has been successful. The ESU’s equipment, technology and IT staff have proved to be reliable and knowledgeable.

3. Volunteer Lawyer's Program Brochure. Ms. Bach was not present at the meeting. An update on the Volunteer Lawyer's Program Brochure will be added to the agenda for the fall meeting.

4. Bankruptcy Fundamentals from Basic Concepts to Advanced Issues. Judge Saladino provided the committee with information on the upcoming seminar sponsored by the NSBA – Bankruptcy Section on May 9–10, 2019.

5. Mediation. Don Swanson provided an update on mediation. Don expressed after seeing the video conferencing capabilities at today's meeting, video conferencing could be extremely useful and effective in a mediation context particularly in states like Nebraska, North Dakota, South Dakota and Iowa where long distances are involved.

6. Webpage design refresh. Eva Roeber reported the Administrative Office of the U.S. Courts ("AO") will be pushing out a new design for all federal court webpages across the United States. Visiting federal court websites with identical design layout are more user friendly to the outside user.

7. Incorrect event codes. Eva Roeber informed the committee there has been an upswing in the use of incorrect event codes by party filers in ECF. Due to statistical reporting requirements by the clerk's office it is essential the correct event codes be selected when documents are filed. Incorrect event codes require the clerk's office staff to refile documents using the correct event codes to ensure the accuracy of the statistical information being reported. Refiling documents makes confusing and longer dockets. Discussion was held on how to reach out to attorneys and their staff. Judge Saladino suggested the court conduct training sessions for staff and/or attorneys since a large number of ecf filers filing documents may not have been trained when the court conducted the initial training in 2001 and 2002. James Overcash expressed providing opportunities for staff to interact with the clerk's office creates a positive working relationship between the outside users and the clerk's office.

8. Other business.

Reaffirmation Checklist. Judge Saladino mentioned the Reaffirmation Checklist which is a recent addition to the court's website. The checklist is intended to be a tool used by attorneys when their clients enter into reaffirmation agreements. The checklist sets forth when reaffirmation hearings are necessary and criteria required when a reaffirmation agreement has been scheduled for hearing.

Senate Bills. Don Swanson reported there are two bills in the senate: (1) to raise the debt limit for Chapter 12 cases from 4.1 million to 10 million; and (2) to create a Chapter 12 type of situation for small businesses within Chapter 11. Judge Saladino expressed two reasons why there may not be many Chp. 12 filings: (1) because of the current debt limit; and (2) collateral land values are high so the debtor cannot get a great benefit from filing bankruptcy.

James Overcash added he has reached out by email and phone to Senator Grasley, all senators who were co-signers of S897, and the Nebraska U.S. Senators on trying to make a change

regarding the payment of trustee's fees 11 U.S.C. §1226 and § 1225. Since there is a current bill in the senate addressing Chapter 12, James is requesting Senator Grasley and the bill's co-signers to work in this other item about what gets paid through a Chapter 12 trustee. The case of *In re Wagner*, 36 F.3d 723 (8th Cir. 1994) was decided years ago and deals with the concept of what payments are to be made to the Chapter 12 trustee and whether it is required or not. There is a split in the districts as to how that works and what payments are, and are not required. In Nebraska, generally payments that are modified loans are made through the Chp. 12 trustee and payments that are not modified loan terms, typically are not made through the trustee.

Jessie Polson will appoint a new member to the bankruptcy committee to serve a two year term and will inform the committee prior to the next meeting.

The meeting adjourned at 1:00 p.m. The next meeting will be in the fall, however, if issues arise before that meeting, they can be discussed by email.