

**United States Bankruptcy Court
District of Rhode Island**

Minutes of the October 16, 2008 Meeting of the Attorney Advisory Committee

The Meeting of the Bankruptcy Court’s Attorney Advisory Committee was held at the Clerk’s Office on Thursday, October 16, 2008 at 3:30 p.m.

<u>Attendance:</u>	Steven Boyajian	Catherine Eastwood
	Sandra Nicholls	Robert Huseby
	John Simonian	Patricia Davis

<u>Court Staff:</u>	Hon. Arthur N. Votolato	Susan Thurston
	Jeffery Dana	Amy Seale

Introduction: The meeting was called to order by Susan Thurston, Clerk of Court

Old Business

1. **Susan Thurston made a motion to approve the meeting minutes of January 17, 2008 and the committee approved the motion.**

2. **Modified E-Filing Program in Use in CA-E - Results:**

Staff members traveled to California to evaluate their electronic filing system. After extensive in-house testing of CA-E’s system, the Court decided not to move forward with this program as the system currently in use in Rhode Island is more efficient and advanced. Instead, the court will be looking to improve those events that seem to cause the most difficulty for the electronic filers, as well as create Adobe Captivate training modules to assist filers with the ecf filing process.

3. **Update on Financial Literacy Program**

Given the extensive time involved in conducting the MA Financial Literacy Program, the Court would also like to look into the “Care Program”, which is use in many bankruptcy courts around the country, first sponsored by the Western District of New York. Further discussion about this program was tabled until a future meeting.

4. **Need for Training in Bankruptcy Law**

A discussion was held as to the need for training in bankruptcy for the bar. The Committee felt that some in-depth bankruptcy training would be helpful. Susan will contact the R.I. Bar Assoc., and discuss scheduling a Volunteer Lawyer Program training for the Spring of 2009, if possible.

New Business

5. **Hope for Homeowners Program** -

Judge Arthur Votolato spoke to the committee about the Hope for Homeowners program and asked whether they thought that the program, and the bailout bill, would result in some relief to debtors in Bankruptcy from home foreclosures. He was not sure if many attorneys, lenders or borrowers were aware of the new program and expressed his support for the program and for encouraging its use. Per committee members, most lenders don't want the property back so the trend is for loss mitigation for newer loans. The lender attorneys said they would ask around to get a feel from their clients about the program.

6. **Review of Proposed Amendments to Local Rules, Forms, and Appendices to be published for Notice and Comment:**

The committee reviewed all of the proposed rules, forms and appendices and a lengthy discussion was had on the following proposed rule and form changes:

Rule 2017-1 - The committee suggested changes to the time for filing an application for compensation and after discussion, the Court will amended the local rule to incorporate the suggestions from the committee.

Rule 3022 – 1 and Form N.1 - Susan explained that the amended rule and new form were needed in order to comply with individual chapter 11 cases post BAPCPA.

Rule 4001-1 and Form R – A lively discussion took place concerning the proposed new form for collecting payment, debt and mortgage related information in connection with relief from stay motions. The proposed form is modeled after one in use in NY-S and is intended to help the parties and the court more easily determine the status of the secured debt. A suggestion was made to require the use of the form only if the debtor intends to keep the subject property as stated in the Statement of Intent. Additional suggestions were made concerning various aspects of the form, including the declaration portion.

These suggestions will be provided to Judge Votolato and when the final version is noticed out for public comment, further comment can be made if needed.

Appendix IV - Maximum Attorney Fee without Written Fee Application

One of the members had requested that this topic be put on the agenda to discuss raising the fee cap limits, which were last set in early 2006. The Committee was given a chart comparing the chapter fees charged by the bankruptcy courts in the First Circuit. Members of the committee felt that with inflation and the vast amount of additional work required to manage these cases (i.e., pay stubs, tax returns, etc.), the current fees should be updated. Most of the other districts in the First Circuit do not impose a no look fee in Chapter 7 cases, only in Chapter 13 cases. If the court decided to adopt a “no look” policy, the Trustees would have to review the attorney’s fees as they do in Massachusetts. In Chapter 13 cases, Massachusetts allows a small amount (\$500) to cover post confirmation work. A recommendation was made to add this to the RI amount.

Rule 3015-3(a) Motions to Modify/Cramdown -

A request was made to enlarge the time for creditors to file responses to motions to modify secured debt, which currently is ten days. There have been problems with counsel receiving timely notice of these motions, as they are sent to the lenders and may take a few days to get routed to counsel for response. In addition, due to the importance of this information being received by the lender, it was further suggested that a heightened form of service be made for these types of motions. The Committee suggested that the rule be amended to require that in addition to service by first class mail, that the debtor also be required to serve the motion by certified mail. In addition, the Committee agreed that the objection deadline should be increased from 10 days to 20 days. The rule will be modified to include these suggestions.

7. Chapter 13 Pre-Confirmation Conference; LBR 3015-3(a)

A discussion was held about the current practice of conducting the Chapter 13 pre-confirmation conference with the Chapter 13 Trustee 48 hours before the hearing and whether this time frame is adequate, or should be enlarged. It is becoming much more common for the court to be contacted late the day before the hearing to remove such matters from the calendar as a result of these conferences not being timely conducted. Alternatively, would a separate notice of the requirement be helpful to send out to debtor’s counsel? Committee member Steven Boyajian discussed this issue with the Chapter 13 Trustee and he did not believe that giving any more time would be helpful and that the current practice should remain as is.

8. Declarations Regarding Electronic Filing; Amendment to Local Rule 5005-4

Due to the difficulty in filing and tracking the P.3 and P.4 documents for original signatures of electronically filed documents, the court researched how other courts in New England are handling this requirement. The majority of courts are now requiring that the filer maintain the original signatures rather than filing a separate declaration with the court. The Committee strongly endorsed this practice and recommended that the rule be changed to incorporate it. After discussion, the language in the proposed rule will be modified to require the filer to maintain all original documents for two years from the date of case closing.

The next meeting is scheduled for Tuesday, January 13, 2009 at 3:30 p.m.