

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

Minutes of November 10, 2011 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, November 10, 2011 at 3:30 p.m.

<u>Attendance:</u>	Joseph Dolben	Gary Donahue
	Janet Goldman	Steven Boyajian
	John Simonian	

<u>Court Staff:</u>	Susan Thurston	Jenna Hashway
	Amy Seale	Gail Kelleher

- 1. Introduction:** The meeting was called to order by Susan Thurston, Clerk of Court.

Old Business:

Upon Motion, the minutes of the meeting of July 28, 2011 were unanimously approved.

- 2. Review of Loss Mitigation Program:** Susan asked if any additional issues were identified since the changes discussed at the last meeting were implemented. Attorney Joseph Dolben replied that LM matters were moving more smoothly. Susan stated that LM statistics would be posted to the website next week, and advised that use of the portal has increased. **She reminded the committee to email contact information of lenders who are not currently participating in the portal.**

New Business:

- 3. Chapter 13 Post-Confirmation Expenses:** Attorney John Simonian requested a \$250 increase to the no-look fee to compensate attorneys for increased post confirmation expenses: rent; staff; seminars; software; and expense of serving plans/amended plans, as well as the increased general cost of running an office as clients are more difficult and cases require more oversight US Trustee Gary Donahue stated that the fee was last raised in 2005 and that he would survey his colleagues around the country regarding their rate and share that data with the AAC. Susan stated that \$3500 + \$500 fee is identical to the Massachusetts Chapter 13 bankruptcy rates, which rates the Court generally seeks to remain consistent with. Attorney Steven Boyajian stated that the Chapter 13 Trustee

would prefer that fee applications be filed as distribution to unsecured creditors is low. Gary Donahue said no-look fees are common in other districts. He suggests maintaining time records to maintain a distinction between those attorneys who do a good job vs. a poor job, otherwise \$3500 becomes the floor rather than the ceiling.

One of the concerns raised was the high cost of mailing chapter 13 plans and amended plans. Susan mentioned that we could look into mailing a summary of the plan instead, similar to what we do with fee applications. FRBP 3015(d) and (g) allow for the service of a plan or a summary of the plan/amended plan. **The Court will collect more information about this option and report back at the next AAC meeting, together with the fee information the UST obtains from other districts.**

4. RIBA Training Request: Susan Fontaine (Volunteer Lawyers Association) asked if the AAC could deliver bankruptcy training in a three session format to new attorneys in late spring or early fall, 2012. Suggested topics identified:

- Loss Mitigation
- Schedule Preparation
- Client Intake and Means Test
- Chapter 13 Plan Calculation
- Amendments
- Pitfalls

Susan will get more information from Susan Fontaine on the length of the proposed training sessions and report back to the AAC.

5. Court Anticipated Reduction in Workforce: Susan shared the anticipated FY 2013 budget shortfall with the Committee and stated that two staff will be downsized by fiscal year end, September 30, 2012 and further reductions in force are likely in fiscal year 2014. She asked that the Committee disseminate this information with their colleagues and to let us know of any position openings to share with staff.

6. Potential Service Reduction: In light of anticipated workforce reductions, the court will review its current procedures to determine which may be eliminated or reduced. Two immediate options: *On the Docket* and quality control of proofs of claim. The Committee advised that the court newsletter is a useful means of communication; they had no objection to stopping proof of claim quality control.

7. **Filings Decline:** Susan asked the Committee for their thoughts as to why filings in the last two months had declined over 30%. Some thoughts:

- People are judgment proof;
- J. McConnell's foreclosure docket;
- People who are dealing with impending foreclosures receive many solicitations from attorneys offering help (different direction than bankruptcy).

John Simonian stated that job loss/income reduction is the driver for bankruptcy. Situations are more complicated now as people have used their homes like a credit card. Steven Boyajian stated that there are other programs advertised to help people 'save their homes' that may divert people from filing for bankruptcy. **The Court will track how many filers are duplicate filers.**

NOTE: following the meeting, we determined that duplicate filers account for 5.39% of the current caseload.

8. **Other Business:** Susan asked if the Committee experienced any issues with the recent upgrade to CMECF Release 4.2. The office of UST has an issue where they can only view 31 days of data via the cases report rather than a larger date range, and also had a problem accessing payment advices. In order to 'fix' the payment advice extraction for the US Trustee, the document had to be unrestricted for everyone with the unintended consequence of displaying the debtor's personal identifiers to the public if not properly redacted. **A discussion took place about whether to have the payment advices filed directly with the chapter trustee and/or the US Trustee rather than the Court as many other districts do. Further research needs to occur before a decision on which way to go on this issue can be made. Operations Supervisor Amy Seale will follow up with the automation department regarding the limited date range in the cases report.**

NOTE: following this meeting, Amy advised that a modification request is pending to correct the cases report issue. The US Trustee should contact Jody Venuti when in need of reports exceeding 31 days until the problem is resolved.

Susan asked if any committee members were utilizing filing agents (allows attorneys' staff to have their own login/password). None were at this time.

Steven Boyajian raised the issue of Orders to Show Cause for Failure to Prosecute in unanswered adversary proceedings. He stated that there is usually a reason why the plaintiff has no objection to the defendant having extra time to answer, and noted that in several cases, the OTSC was issued by the court within days of the expiration of the

answer deadline. He suggested that the OTSC not be issued immediately as it puts the burden on the plaintiff to file a motion to extend time. Gary Donahue stated the language on the OTSC is harsh/non-collegial. **The Court will review the language on the OTSC and extend the status deadline which initiates the issuance of the order. NOTE: following this meeting, the status deadline was increased from 60 days to 120 days.**

Meeting adjourned at 4:42 p.m.

9. **Next Meeting Date:** Thursday, February 16, 2012 at 3:30 p.m.