

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

Minutes of the March 18, 2010 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, March 18, 2010 at 3:30 p.m.

<u>Attendance:</u>	Robert Huseby	Stefani Howell
	John Simonian	Joseph Dolben
	Charles Pisaturo	Russell Raskin
	Lisa Geremia	Catherine Eastwood
	Sandra Nicholls	

<u>Court Staff:</u>	Susan Thurston	Amy Seale
	Abigail Sneed	Katie Flaherty

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

Old Business:

2. Upon motion, the minutes of the meeting of December 17, 2009, were unanimously approved.

3. Review of RI Loss Mitigation Program (old and new matters)

(a) **Impact of Most Recent Form and Order Changes:** The committee discussed the latest changes to the loss mitigation procedure and the types of modifications being approved: i.e., reductions of interest rate, lengthening of mortgage term. It was noted that the bankruptcy case would remain open through the period of the trial loan modifications.

The committee also discussed the process for terminating a LM if the debtor fails to qualify. It is recommended that the creditor party file a motion to terminate LM, and if objected to, will be set for hearing. Otherwise, the motion will be granted by rule of court.

(b) **Payment Issues raised by Tom Quinn.** Stefani Howell attended in Tom's place. Debtors often have difficulty knowing what payment address to use to submit their mortgage payment once in bankruptcy. Some similar payment issues with the Loss Mitigation Program: some debtors are not past due so they don't qualify for HAMP. The payment address may change once in bankruptcy but the mortgage holder does not always notify debtors what the new address is. This causes problems for debtors trying to get their payments accepted during the bankruptcy. The committee agreed this can be challenging depending on what department is handling the mortgage, but had no proposed solution other than to contact the bank and attempt

to locate a proper address, and advise the court if the failure to pay is due to an addressing problem.

(c) **Second Amended Loss Mitigation Program due to be finalized shortly.** The Court is in the process of making additional amendments to the loss mitigation program to make it more efficient and consistent with HAMP. Some highlights of the proposed changes include:

- Replace the monthly court status conferences with written status reports during the loss mitigation period.
- Objections to loss mitigation that fail to address the “likelihood of success” standard will be overruled without hearing.
- Payment of the mortgage is not a pre-condition for participation in the LM program – HAMP requires that the borrower be in default or in imminent risk of default.
- Parties should file a motion to compel if one side fails to comply with the terms of LM Order.
- Status reports may include a request for an extension of time to complete the LM process, and need not be filed as a separate motion.

4. Chapter 13 Matters -- Renewed Objection event: The new event is working well.

5. CARE Program: Credit Abuse Resistance Education: The Court has completed the CARE PowerPoint presentation and has held one focus group in North Smithfield. We are now ready to begin training of faculty and scheduling presentations at local schools. Unfortunately, time did not allow for a review of the presentation during the meeting; interested attorneys will be notified of the date for training in the near future.

New Business:

1. Credit report addresses (see R. Raskin letter of January 7, 2010): Russell explained that relying on the creditors addresses listed on the credit reports often results in significant returned mail for bad addresses. He suggested adopting a local rule that use of the creditor address contained in the credit report would serve as sufficient notice under §521 of the Code. The committee discussed this proposal but was unsure who supplies the addresses to the credit reporting agencies, and felt that this type of requirement would need to be made nationally and not at the local level since it is the debtor’s duty to maintain records of their creditors’ names and addresses. If there is a specific noticing problem in a given case, the issue of which address to use should be raised with the court on a case by case basis.

2. IFP Applications and Payment of Attorney Fees: Discussion about the number of IFP applications being filed where an attorney fee is taken. In some instances, the information about fees listed on the IFP application differs from the 2016(b) statement filed by the attorney. The

court will ensure that these documents are looked at together in reviewing these applications (although in some instances the 2016(b) is not filed with the initial petition and IFP application). In addition, if a trustee feels that the approval of the application was in error, particularly where a large fee is taken, they should file a motion to reconsider.

3. Delay between date petition signed and when filed. Lisa Geremia raised the issue of debtors signing their petitions 6-8 months before filing, resulting in the information being out of date and inaccurate. It seems to be the same set of attorneys doing this. Various solutions were discussed including requiring the attorneys to bring the wet signatures to the §341 meeting; create a Best Practices document; cover the topic on the next *On the Docket* publication; and conducting a training seminar. Overall, the committee felt that more education was definitely needed. Susan will contact the RI Bar Association to coordinate sponsoring a Food for Thought or Practical Skills series on preparation of schedules as well as on the loss mitigation program.

4. Local Form R - Relief from Stay worksheet (see J. Dolben email dated March 16, 2010): Joe Dolben raised the issue of whether Local Form R is necessary in the Chapter 7 context as the dispute generally does not involve post-petition payment performance. The committee members largely agreed that the form was not necessary, although at least one member felt that the form was helpful to the debtor's attorney in order to know the date that the last payment was received. The committee consensus was that the form should not be required in the Chapter 7 context unless it is specifically requested by the court or by the debtor after the filing of a motion for relief from stay. However, the motion for relief itself should specifically include a statement as to the date and the amount of the last payment. The court will include these changes in its next local rule revision.

Next meeting Date: Thursday, June 24, 2010 at 3:30 PM.