

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

Minutes of September 24, 2019 Meeting of the Attorney Advisory Committee

The meeting of the Bankruptcy Court’s Attorney Advisory Committee was held at the Clerk’s office on Tuesday, September 24, 2019 at 3:30 p.m.

In Attendance:

Hon. Diane Finkle	Tatyana Tabachnik
Susan Thurston	John Boyajian
Amy Geraghty	James Atchison
Jonathan Pincince	Patricia Antonelli
Julia Blackburn Otero	Elizabeth Lonardo
Lisa Geremia	Charles Pisaturo
Russell Raskin	Gary Donahue
Stacy Ferrara	

1. Rules Update – December 1, 2019 Effective Date

The Committee reviewed upcoming federal rule and form changes and draft local rule changes. The Committee discussed the upcoming change to Fed. R. Bankr. P. 4001 and whether auto lenders, in particular, would still require chapter 13 debtors to obtain court approval of new financing. If deemed necessary, it was suggested that counsel file a consent order for court signature rather than a motion for approval requiring full notice.

There was discussion of the upcoming change to Fed. R. Bankr. P. 9036, particularly the portion reading “service of notice is complete upon filing or sending but is not effective if the filer or sender receives notice that it did not reach the person to be served,” and whether a party or counsel making a filing in the ECF system would receive electronic notice if the filing did not reach an intended electronic recipient. Court staff will investigate that question with regard to the BNC and advise.

2. Recently Enacted Legislation Impacting Bankruptcy

The Committee reviewed and discussed the four pieces of recently enacted legislation: (1) The Family Farmer Relief Act of 2019; (2) the Honoring American Veterans in Extreme Need Act of 2019 (“the HAVEN Act”); (3) the National Guard and Reservists Debt Relief Extension Act of 2019; and (4) the Small Business Reorganization Act of 2019 (“SBRA”). The first three acts are effective now and the HAVEN Act will require an amendment to the means test form, which should be available shortly. The SBRA will be effective on February 19, 2020.

Regarding the SBRA, the US Trustee explained how the Office of the U.S. Trustee is planning for its effective date in February 2020, including that rather than a standing trustee in each district for these case types, it will instead use a trustee pool. It was also noted that a

small business's use of the SBRA is a voluntary election and that there may be certain positives and negatives for a small business considering electing the SBRA. The Court will keep the bar advised of upcoming national and local rule, form and ECF event changes needed to implement the SBRA. The Court will also put together a live training; Patricia Antonelli and Lisa Geremia volunteered to assist.

3. Attorney Fees in Chapter 13 Cases

The Clerk introduced this topic by reviewing the history of chapter 13 no-look counsel fees in this district (pre-confirmation last increased in 2006) and noting the recent change in Massachusetts increasing the no-look fees in that district to \$4,000 for pre-confirmation services and \$1,000 for post-confirmation services. There was lengthy discussion regarding the appropriate fees for this district, including the fee for loss mitigation services. Ultimately it was decided by the Court that an increase of the various chapter 13 no-look fees is in order, with the new amounts to be (1) \$4,000 for pre-confirmation (up from \$3,500); (2) \$1,000 for post-confirmation (up from \$500); and (3) \$3,000 for loss mitigation (up from \$2,000). Those changes will be effective on December 1, 2019, if enacted after a period of public comment.

4. Chapter 13 Secured Creditor Objection to Plan Confirmation Where POC Controls

The Committee discussed the practice in other districts where secured creditors do not file objections to confirmation of chapter 13 plans where their only objection is as to the amount of the prepetition arrearage stated in the proposed plan. Specifically, in New Hampshire the chapter 13 plan states at part 11.B., “[i]n the event that a proof of claim is filed in an amount different from the amount listed in this plan, the proof of claim amount shall be deemed to be the correct amount unless the debtor(s) or another party in interest successfully object to the proof of claim.” Similarly, our district's chapter 13 plan states in part 3.A.(1), “[u]nless the Court orders otherwise, the amount(s) listed in a timely filed Proof of Claim controls over any contrary amount(s) listed below.” [These provisions are consistent with the national form chapter 13 plan.]

The Committee discussed why these objections were being filed, and secured creditor counsel explained several reasons why they file such objections – including because (a) a proof of claim has not yet been filed or cannot yet be filed when an objection to plan confirmation is due; (b) the attorney is hired for the limited purpose of objecting to the plan, and not necessarily for filing a proof of claim; or (c) because the payment structure provided by their clients requires them to object to the plan – as well as under what circumstances they might be able to avoid doing so and instead resolve their objections more informally.

5. Telephone Interpreter Services

The Clerk notified the Committee that the Court obtained approval for Federal Bench-Bar funding to cover the cost of a new language-line telephone interpreter service for use during bankruptcy court proceedings. There was discussion about the scope of such a service during court proceedings, including whether it should be available for parties only or also for

witnesses, whether it should be available only on advance request or on demand, and whether any local rule changes are necessary to implement such a program. There was agreement that the broadest possible use of the service should be made, as well as that local rule changes are likely unnecessary but that information about the service should be noticed to the bar and the public. The Court expects to have this service available by the end of October 2019.

6. FLMB Student Loan Modification Program

Additionally, the Clerk informed the Committee about a new program in the Middle District of Florida Bankruptcy Court to manage student loans, which that district adopted by administrative order and which goes into effect on October 1, 2019. This program appears to be somewhat like our loss mitigation program but for student loans. There was discussion about whether such a program would be useful in our district and whether it might interfere with the Bankruptcy Code's classification and/or priority scheme. The US Trustee noted that the Department of Justice has filed an objection to the FLMB administrative order. The Court noted the availability of the National Student Loan Data System (nslds.ed.gov), which can help parties and counsel find information about active student loans, and it was suggested that a link to that resource be added to the court's website. The Committee members unanimously agreed that we should take a wait-and-see approach to the student loan management program in FLMB, and to watch how things unfold with the program and practice over the next six months. Finally, there was discussion about whether, and to what extent, debtors' counsel discuss with their clients the possibility of discharging student loans, as well as the obstacles to doing so.

7. Other Business

There was discussion of arranging a continuing legal education seminar and/or an open forum regarding some of the topics discussed at this meeting, including the federal and local rule and form changes, the attorney fee changes, the telephone interpreter service, and the SBRA. It was agreed that such a CLE or forum would be useful, likely after the December 1, 2019 effective date of the rule changes.

The meeting adjourned at 5:00 p.m.