

## MINUTES FOR LAC MEETING ON SEPTEMBER 20, 2011

### I. Call to Order

Warren Martin, as Chairman of the LAC, called the meeting to order. Warren expressed thanks to the outgoing LAC members – G. Glennon Troublefield, Frances Gambardella, and Charles Forman – for their service to the LAC. Chief Judge Wizmur presented plaques to mark the occasion. Also, Warren welcomed new LAC members Ginny Fortunato, Brian Nicholas, and Stacey Meisel.

### II. Chapter 11 Subcommittee – Mark Hall, Chair

Mark presented the Subcommittee's proposed Small Business Debtor's Combined Plan of Reorganization and Disclosure Statement for use as a Local Form. The following decisions were made: (i) the Form should include a "Summary of the Plan and Distribution to Creditors"; (ii) the definitions section of the Form should be clarified to address cases in which a trustee has been appointed; (iii) definitions should appear at the end of the Form in a glossary; (iv) unnecessary sections, e.g., "What Does it Mean that the Debtor is a Small Business Debtor?", should be deleted; (v) more plain language, when appropriate, should be used; (vi) language encouraging creditors to vote on the plan should be added; and (vii) language encouraging creditors to contest the adequacy of information should be added.

Mark will distribute a new draft of the Form reflecting this analysis.

### III. Local Rules Subcommittee – Henry Karwowski, Chair

#### (A) Proposed Local Rule 9006-1

Henry introduced a proposed new Local Rule 9006-1, which would provide that unless otherwise provided in the Code or Rules, when a motion to extend the time to take any action is filed before the expiration of the period, the time shall automatically be extended until the Court acts on the motion, provided the movant has requested the next available hearing date. Henry noted that the proposed Rule would not apply to certain Code sections that require the movant to obtain an extension before the expiration of the period (e.g., sections 365(d); 362(c)(3); 362(d)(3)). Also, he noted that certain Bankruptcy Rules already provide that an extension of a period may be obtained on motion filed before the expiration of the period (e.g., Rules 4003(b), 4004(b), 4007, 8002(c)). He noted further that Bankruptcy Rule 9006(b) would already appear to provide for such an extension as to all Rules generally. Thus, the proposed Local Rule 9006-1 would not apply to periods set by the Rules, but rather, to periods set by the Code (unless it provides otherwise, as noted above), the Local Bankruptcy Rules, and the Local Civil Rules, in order to reduce confusion as to what a movant must do in order to obtain an extension of time of such periods.

Judge Stern expressed concern, however, that the proposed Local Rule would have the effect of overriding the Code where the Code authorizes an extension only "for cause." Also,

Chief Judge Wizmur questioned whether such a rule is necessary in the District of New Jersey, in contrast with the District of Delaware, with its high volume practice.

Judge Stern and Henry will review the issue and report back to the Committee at the November meeting.

(B) Rule Change Suggestion Box

Additional Local Rule changes/recommendations have been proposed; they will be reviewed at the November meeting.

(C) Review of Local Rules

Given the time that has passed since the previous review of the Local Rules (early 90's), and given the changes to the Code and to the Rules over the years, the Judges will discuss at their next meeting the major task of reviewing/rewriting the Local Rules.

IV. Mediation Program Review Committee (Ad Hoc Committee) – Mariah Murphy, Chair

This new Committee, recently formed by Warren, will review the Mediation Program before the next meeting and make any required recommendations to the Judges. Committee members: Mariah; Judge Lyons; Michael Sirota; Mark Hall; and Brian Nicholas.

V. Chapter 13 Subcommittee Report – Herb Raymond, Chair

(A) Discussion of Standard Order Regarding Schedule Amendments

1. Pre-Confirmation (as to Pre-Petition Debts)

Herb suggested that the standard order that is entered upon the filing of an amendment be modified to reflect the 2005 changes to the Code, e.g., language relating to dischargeability.

2. Post-Confirmation (as to Pre-Petition Debts)

The Committee queried whether the entry of the standard order during this period violates the Code, the Rules, and due process. Also, it noted the potential resulting hardship to the debtor. Albert Russo has drafted a memo addressing the issue. The Subcommittee will review the memo and the issue and report back to the Committee.

(B) Court's New Loss Mitigation Program

1. Model plan

The Subcommittee has determined that no changes to the model plan need be made as it pertains to loss mitigation because there is already space in the plan to reflect any additional information about payments.

2. No look fee for attorneys representing clients in loss mitigation program

Chief Judge Wizmur has suggested that attorneys receive a supplemental fee for such services. Herb indicated that it might be premature to set a fee at this time. The Subcommittee will review the issue.

3. Proposed mandatory use of DM portal for submitting mortgage docs/utility of same

Although Herb has not yet had an opportunity to try the device, and although not all mortgage companies and servicers use it as of yet, Bruce Truesdale and Ginny Fortunato suggested that it is very helpful, and it would appear that the device is particularly helpful to those seeking a modification. It was decided that use of the portal should be encouraged, but not required, at this time.

(C) Discussion regarding expressly including confirmation orders within Seven Day Rule

The goal is to create a mechanism that would allow the debtor to review an order but also not adversely impact trustees. The Subcommittee is still reviewing the issue.

(D) Discussion regarding potential filing of distribution reports, prior to distribution

The issue is problematic because while expenses are increasing, caseload is decreasing. The Subcommittee is still reviewing the issue.

(E) Application/motion or otherwise to discharge mortgages, judgments, liens, etc.

The Committee decided that the "reverse transmittal" approach is the simplest and easiest method to address the issue (whereas putting the relief in the confirmation order is probably not appropriate, given the possibility that the plan will fail). The Subcommittee will draft a form and order.

(F) Issue of modified plans resulting in the automatic rescheduling of confirmation hearings

Because this may be a Clerk's Office issue, Jeanne Naughton is reviewing it. The Subcommittee will report back on the issue.

(G) Supplemental Schedule of Debts

Rule 1019 requires, after the conversion of a chapter 13 case to chapter 7, the filing of a schedule of unpaid debts. There is no procedure (including no fee) for adding these new creditors to the matrix, however; thus, due process concerns are implicated. The Subcommittee will review the issue and report back on it.

VI. Approval of Minutes of February 8, 2011 Meeting

The Minutes will be approved at the next Committee meeting.

VII. Clerk's Report – James J. Waldron

Jim reported that the Court budget will be cut by approximately 20% next year, but because the Court has already prepared for the cutback (e.g., by not filling vacancies), the impact on the Court will be in the amount of only approximately \$200-300k.

Bankruptcy filings are down not only in New Jersey, but across the country. If the trend continues, more cutbacks in the Court can be expected next year.

The Court is developing an online filing program for *pro se* chapter 7 debtors; it's unclear whether such a program will be developed for chapter 13 debtors.

A standardized webpage is being developed for all courts in the Third Circuit.

A new version of CM/ECF is being implemented.

VIII. Liason's Reports

(A) District Court – Michael Sirota

Nothing to report.

(B) U.S. Trustee – Martha Hildebrandt

Martha recommended that Committee members visit the UST's website; the site is attempting to address topical issues such as committee formation meetings.

The UST is now distributing pamphlets (in both Spanish and English) regarding mortgage scams.

The UST is reviewing the means by which debtors submit required documents to trustees. Some trustees are actually using their own information portals.

(C) IRS – Wendy D. Gardner

Nothing to report.

(D) N.J. Attorney General – Ramanjit Chawla

Ramanjit recommended that parties, before filing a motion, contact the AG's office in order to resolve issues, and thereby reduce the number of motions filed and increase the number of consent orders filed. The biggest issue is missing tax returns and other supporting documents.

(E) N.J. State Bar – Jerry Poslusny

The annual dinner will be held on October 25. Also, the Section is closely monitoring the Chapter 11 Bankruptcy Venue Reform Act of 2011 (H.R. 2533).

IX. New Business.

Nothing recommended.

X. Next Meeting Date: November 21, 2011 at 6:00 PM