

## **Minutes of Lawyers Advisory Committee Meeting**

Date of Meeting: December 9, 2015

Location of Meeting: Forsgate Country Club, Monroe Township, NJ

**Members in Attendance:** Chief Judge, Honorable Kathryn C. Ferguson, Judge Andrew Altenberg, Judge Christine Gravelle, Judge Stacey Meisel, Judge Vincent Papalia, William Mackin, Chair, Catherine E. Youngman, Vice-Chair, Jeanne Naughton, Deputy Clerk for the US Bankruptcy Court, Martha Hildebrandt, Assistant United States Trustee, Robert J. Schneider, US Trustee's Office, Mark E. Hall, David Beslow, Joseph Casello, Carrie J. Boyle, Ramanjit K. Chawla, Eamonn O'Hagan, Mohung Wong, Morris Bauer, Anne S. Cantwell, Karina Pia Lucid, Louis Modugno, Cassandra Porter, Brian Nicholas, Ross J. Switkes, Shoshana Schiff and Michael Brown. Special Guest Attendee – Andrew Vara, United States Trustee for Region 3.

**I. Welcome and Update.** Chairman William Mackin welcomed Andrew Vara, United States Trustee for Region 3 as a special guest for the meeting. Mr. Vara spoke about what a wonderful first year he has had as acting United States Trustee. He gave an update on the new Chapter 11 Monthly Operating Report that is in the works. He indicated that the Office of the US Trustee will have a new staff attorney shortly. He also spoke about the office's initiative to prevent mortgage abuse.

Chairman Mackin confirmed Subcommittee chair and member assignments and reported that the minutes for the September 2, 2015 LAC meeting had been approved by negative notice and had been posted on the court's website. The Chairman also reminded everyone that participation in general meetings and subcommittee meetings is crucial to the success of the organization. The meeting dates for 2016 are being proposed and will be circulated prior to the next meeting which will be in March 2016.

**II. New Jersey District Court LAC Liaison Report.** Subcommittee Chair Shoshana Schiff reported that the District Court experienced record high filings at a time that the Court is waiting for vacancies to be filled. The District Court LAC is proposing a new form of protective order which will be sent out for public comment. Ms. Schiff indicated that she presented to the District Court LAC on the issue of judgment executions and making the current form of Writ conform with New Jersey law. Ms. Schiff reported that there would be a memorial for Judge Arenas on January 9, 2016 in Princeton.

**III. Chapter 11 Subcommittee Report** – Subcommittee Chair Mo Bauer reported that the Subcommittee is looking at Rule 3007(d) and omnibus claims objections motions. The Subcommittee will review the District of Delaware's local rule addressing omnibus claims objections.

**IV. Chapter 13 Subcommittee Report** – Chair Andrew Finberg was absent. David Beslow reported that the Subcommittee continues to review (a) the use of "no look fees" and associated issues in Chapter 13 cases, (b) whether lenders/servicers should be required to submit their signed final loan modification papers when they have actively participated in the loss mitigation program, (c) whether Local Rule 3015-1(b) comports with the requirements of Fed. R.

Bankr. P. 7001(2), and (d) whether the DNJ should have a Standard Form of Loan Modification Order. The Subcommittee is prepared to recommend for a vote, at the next LAC Meeting, that D.N.J. LBR 3002.1-1 should be amended to allow lenders/servicers to send HELOC payment changes directly to the borrowers and their counsel and then file a summary of the changes on the individual case docket every six months.

**V. Local Rules Subcommittee Report** – Subcommittee Chair Catherine Youngman reported the Subcommittee continues to work on proposed local rules governing consumer Chapter 7 best practices and anticipated being able to make specific recommendations to the full Committee at the next LAC meeting. The Subcommittee had drafted proposed changes to D.N.J. LBR 2016-1 and D.N.J. LBR 9019-1(f) and had prepared proposed forms to be used in streamlining mediator fees, but was unable to present them because two issues required further consideration. First, there is a question as to whether mediators should be required to file fee applications at all. Second, if mediator fee applications continue to be required, there is an open issue as to whether the mediator should be seeking court approval of the entire fee or only that portion to be paid from the estate. These issues were referred back to the Subcommittee for further discussion. The Subcommittee will continue to work with the Clerk’s Office to address the potential notice inconsistency in procedures for approval of settlements not brought before the Court on motion.

The Subcommittee reported that it had reached conclusion on two issues that will now be ripe for vote at the next full LAC meeting. First the Subcommittee reported that it had concluded that it was not necessary to propose any modifications to the Local Rules allowing the representative of a deceased debtor to be excused from the financial management requirement without the need to file a motion or application with the Court by instead filing the debtor's death certificate on the docket. Second, the Subcommittee reported that it had concluded that it was not necessary to propose any modifications to the Local Rules to address issues arising in cases where a secured creditor can liquidate its collateral (by stay relief or abandonment) but after doing so does not file an amended proof of claim for an unsecured deficiency since secured creditors may, but are not required to, file amended proofs of claim, and the treatment of their deficiency claims by a trustee absent the filing of an amended proof of claim is largely a matter of accounting and reporting between trustees and the Office of the U.S. Trustee.

**VI. Legislative Subcommittee Report** – Subcommittee Chair Brian Nicholas reported that since amendments to the National Rules and Forms have been implemented, the continued purpose of this Subcommittee would be discussed.

**VII. Website/Social Media Subcommittee Report** – Subcommittee Chair David Beslow reported that the Subcommittee continues to work on making more fillable forms available on the Court’s website.

**VIII. Newsletter Subcommittee** – Subcommittee Chair Carrie Boyle reported that there will be changes in formatting of the newsletter. The Clerk’s Office will create a template with each issue being approximately six pages in length, with recurring and alternating content. The newsletter will be produced three times a year. The Subcommittee Chair will implement a protocol for proofreading articles.

**IX. Ad-Hoc Bylaws Subcommittee** – Subcommittee Chair Mark Hall presented written proposed Bylaws amendments. The Subcommittee recommended amending the Bylaws (a) to make several technical and grammatical corrections, (b) to rename several Subcommittees to more accurately encompass the scope of their functions, and (c) to allow for the addition of two new liaison positions for the chapter 13 trustees and the new Federal Bankruptcy Association. These recommendations were referred back to the Subcommittee to permit additional comments on the proposals by LAC members to Chair Mark Hall on or before January 31, 2016. Thereafter, the LAC Chairman will confer with the Subcommittee Chair to formulate the various issues to be put to a vote based on the recommendations and comments, if any. Once these issues are formulated, the LAC Chairman will circulate them to all members by email at least 10 days prior to the next full LAC meeting so that they may be voted on at the next full LAC meeting.

**X. Board of Judges Update** - Judge Gravelle reported that the judges discussed a continued effort amongst the judges for consistency between courtrooms.

**XI. Rules Committee Update** - Chief Judge Ferguson reported that the Local Rules have been in effect since 8/1/15 and that the new national forms went into effect on 12/1/15.

**XII. Clerk's Report** – Jeanne Naughton reported that filings were down again. The Clerk's Office has been focused on the new forms. Next Gen is up and working well and continues to register more practitioners.

**XIII. Liaison's Reports:**

**A. IRS** - Eamonn O'Hagan indicated that the IRS is noticing that discharges are being erroneously entered in individual chapter 11 cases well in advance of plans being completed. The clerk's office and United States Trustee will both be looking at this issue.

**B. NJ Attorney General** – Ramanjit Chawla reported that the biggest issue remains non-service of papers of her office. Judge Altenburg renewed his request that the LAC Newsletter have a permanent notice reminding practitioners of the proper addresses for service for the New Jersey Attorney General, Other Governmental Entities and PEPCO.

**C. NJ State Bar** - Michael Brown reported that the Bench Bar is scheduled for April 8, 2016 and that letters notifying people of their selection to presentation panels would be sent out promptly by Valerie Hamilton.

**XIV. Next Meeting.** The next full LAC meeting is scheduled for March 23, 2016 at 6:00 PM. Location to be determined.

**XV. Motion to Adjourn.** Motion moved and seconded. Motion unanimously approved. Meeting adjourned.