

**Minutes of the Bench Bar Committee  
Topeka Courtroom 210  
October 23, 2015**

Members Present:           Emily B. Metzger, Chair  
                                  Hon. Janice M. Karlin, Judges Representative  
                                  Jordan Sickman, U.S. Trustee's Office  
                                  David Arst  
                                  Wendee Elliott-Clement  
                                  Laurie B. Williams  
                                  Jill A. Michaux  
                                  Steven Rebein  
                                  Justin W. Whitney  
                                  Andrew J. Nazar  
                                  David Lund

Court Staff Present:       David Zimmerman, Clerk of Court  
                                  Stephanie Mickelsen, Chief Deputy Clerk  
                                  Katherine Rosenblatt, Law Clerk to Judge Karlin

Members Absent:           None

Emily Metzger called the meeting to order at 10:07 am. She noted that the committee had approved the minutes of the previous meeting via e-mail.

**Old Business**

*Modification of D. Kan. Bk. Standing Order 08-4(b)(5)*

Last meeting there was consensus that Standing Order 08-4(b)(5) should be amended so that a Mortgage Creditor must send the letter alleging default not less than 14 days (previously 10 days) before taking any steps to modify the automatic stay. David Zimmerman recommended that the amendment to Standing Order 08-4(b)(5) be included in the proposed Standing Order 15-4.

**The Committee agreed to recommend that the amendment to Standing Order 08-4(b)(5) be included in the draft Standing Order 15-4. The Committee also agreed to recommend that a footnote be included in revised Standing Order 08-4(b)(5) explaining that the change was made by Standing Order 15-4.**

## *Review of Discharge Orders*

Last meeting the Committee planned to review Chapter 7 and Chapter 13 discharge orders to determine whether language specific to pre-BAPCPA cases should be deleted.

**The Committee agreed that this issue is moot because the new discharge forms that become effective December 1, 2015, do not contain references to pre-BAPCPA cases.**

## **New Business**

### *Proposed D. Kan. Bk. S.O. 15-4 Updating Local Bankruptcy Rules to Address Comprehensive Changes to Bankruptcy Forms Effective December 1, 2015*

Because most bankruptcy form numbers will change effective December 1, 2015, David Zimmerman recommended a series of editions to the Local Bankruptcy Rules. The Committee reviewed each of the recommendations in detail.

**Citation Conventions:** David Zimmerman recommended that the local rules should cite the new Official Forms without using a leading “B” in front of the form number. For example, rather than referring to “Official Form B106C,” the local rules would refer to “Official Form 106C” because that is the numbering format printed on the actual forms. Citations to the Director’s Forms (also known as Procedural Forms) will contain the leading “B,” primarily because a citation to “Form 1040” would lead some to assume that it referenced a tax return, whereas a citation to “Form B1040” would more clearly refer to a bankruptcy form.

LBR 1001.1(d): a punctuation error was corrected.

**The Committee agreed that where mere typographical or grammatical editions are made, there is no need to show an amended date at the end of the rule. See, e.g., LBR 1001.1(d) (removing a comma between “March” and “2005”); LBR 1009.1(a) (adding “to this Rule” to the end of subparagraph (a), and changing “Schedule E, F” to “Schedule E/F” in the rule and its appendix); and LBR 2002.1(d)(3) (changing “is” to “are”).**

LBR 1005.2: Form numbers were updated.

LBR 1007.1: This rule was discussed at length because some forms ceased to exist, other forms are new, and others were combined.

David Zimmerman recommended that Form 101B (statement about payment of an eviction judgment) be filed as a separate document.

At Judge Karlin's suggestion, David Zimmerman will have another person review all of the editions to form numbers in proposed Standing Order 15-4 to double-check that the updated numbers are correct before the draft Standing Order is submitted to the Judges for their final review and adoption. [Editor's note: this task was completed.]

Although some official form names do contain "you" and "your," Judge Karlin recommended that the local rules should not use "you" or "your" when referring to the forms.

**The Committee agreed that LBR 1007.1 should be amended to require that the petition and attachments be submitted in order of the form numbers, and the matrix should be filed with the petition as the last attachment rather than as a separate document.**

**The Committee agreed that in addition to identifying the schedules by number in Rule 1007.1, a brief description of each schedule should be included, for example "Schedule A: property."**

David Zimmerman will make the editions that were discussed and will circulate the revised draft for Committee review prior to the date we need to commence public comment [November 24, 2015].

The question was raised whether the Declaration Re: Electronic Filing could be filed electronically rather than conventionally. Historically, original signatures on this form were deemed necessary, particularly for the government to pursue allegations of bankruptcy fraud. Accordingly, the Committee did not recommend a change to the current requirement that the document be filed conventionally with an original "wet ink" signature.

**The Committee agreed to remove references to Form 101A (initial statement about an eviction judgment) in Rule 1007.1 to reduce the likelihood that it would cause people to believe they must file Form 101A even when it was not applicable.**

**The Committee decided that the list of documents in 1007.1(a)(2) (documents that must not be filed as attachments to the petition) should be reviewed in the future to determine whether there are any that should be deleted because they were outdated or no longer used.**

LBR 1009.1: Form names were updated in the Rule and its appendix.

LBR 2002.2: The question was raised whether it was necessary to include the noticing addresses of federal and state agencies in LBR 2002.2. It was decided that it was a helpful reference.

LBR 2014.1: Form numbers were updated.

LBR 2016.1: Form numbers were updated.

**The Committee agreed to consider during a future meeting whether to expand the scope of LBR 2016.1 (dealing with compensation of professionals) to Chapter 7 and Chapter 13.**

LBR 4001(a).1: Form numbers and names were updated.

LBR 7003.1: Form numbers were updated.

LBR 7054.1: Form numbers were updated.

LBR 9004.1: David Zimmerman recommended that documents should be paginated beginning with the first page, with sequential number of all pages to follow, including the cover page, tables, indices, and all other parts of the document. Currently, many briefs do not sequentially number all of the pages that precede the statement of facts, meaning that page numbers assigned by the authors to the statement of facts and argument sections often do not match the page numbers assigned by CM/ECF. The proposed rule change will cause page numbers affixed by the authors to correspond to page numbers assigned by CM/ECF after the document is electronically filed. Fixing this mismatching problem will, in turn, allow the CiteLink program to automatically create accurate hyperlinks from one document filed in CM/ECF to a precise page number in another CM/ECF document when it is cited properly.

The Committee considered whether or not LBR 9004.1 should also require each attachment in CM/ECF to be serially bates numbered so that internal document page numbers within attachments will also consistently match page numbers assigned by CM/ECF. However, the Committee recognized that it can sometimes be more complicated for an author to bates number each individual attachment to a brief or motion.

**The Committee decided to recommend that LBR 9004.1(a) be amended to require every page of pleadings, motions, briefs and other documents filed as the main document in CM/ECF to be serially paginated beginning with the first page. The Committee further decided that, although it would be beneficial for attachments to be serially paginated (thereby allowing CiteLink to create the most accurate hyperlinks to the**

**proper page of a cited attachment) the rule should not mandate it at this time. Therefore, LBR 9004.1(a) was reworded to eliminate the requirement that all pages in exhibits and/or attachments must be serially paginated.**

**The Committee further recommended that the language governing citations to unpublished decisions be moved from LBR 9013 to LBR 9004.1, to make clear that unpublished decisions should be cited using the designated format in all documents, not just in briefs and memoranda.**

LBR 9013.1: Because many persons use Microsoft Word rather than WordPerfect, there was a discussion about whether to amend LBR 9013.1(e) to include both WordPerfect and Word.

**The Committee recommended that the final sentence of LBR 9013.1(e) be deleted because a local rule is not necessary for the Court to request that a brief be submitted in word processing format.**

Standing Order 08-4: Form numbers were updated and paragraph (b)(5) was amended as noted above.

Standing Order 11-3: Form numbers were updated and the Committee discussed whether Section VI.C should require a Real Property Creditor to submit a mortgage payment history that matches Standing Order 11-3 Exhibit G, or whether it should require a mortgage history substantially conforming to new Official Form 410A, Mortgage Proof of Claim Attachment.

Judge Karlin also asked Committee members whether they were aware of concerns that require a more global overhaul of Standing Order 11-3. No material concerns were raised.

**The Committee recommended that Standing Order 11-3 Section VI.C should delete the reference to Exhibit G and replace it with a reference to Official Form 410A, thereby requiring Real Property Creditors to provide a mortgage history in substantial conformity with Official Form 410A.**

Standing Order 12-2: This Standing Order was initially issued to adopt Interim Bankruptcy Rule 1007-I, which was later adopted as Bankruptcy Rule 1007-I. Therefore, David Zimmerman recommended that it be abrogated.

**The Committee recommended that Standing Order 12-2 be abrogated as moot because Federal Rule of Bankruptcy Procedure 1007-I has been adopted.**

Standing Order 13-1: Form numbers were updated in the sample notice attached to this rule. David Zimmerman also recommended that Interim LBR 2004.1 be adopted as a permanent rule after notice and comment, mooting Standing Order 13-1. He therefore recommended that Standing Order 13-1 be abrogated by the order of adoption when it is eventually issued to adopt the amended Local Bankruptcy Rules that will become effective March 17, 2016.

**The Committee recommended that Standing Order 13-1 be abrogated when Interim LBR 2004.1 is adopted as permanent LBR 2004.1 after notice and comment.**

It was suggested that the Clerk's Office prepare a summary of changes being made to the local rules and make it available to attorneys.

*Managing Publication of Standing Orders Issued and Mooted Between Published Copies of the Local Rules Booklet*

Anticipating that the Court will publish new rule books in the Spring of 2016, David Zimmerman invited the Committee to give feedback on the best way to explain which Standing Orders were issued and abrogated since the last publication of the local rules. Several options were considered. It was noted that copies of all Standing Orders in effect since January 1, 2014, including orders that were subsequently abrogated, appear on the Bankruptcy Court's public website and a copy of each Standing Order is filed in CM/ECF in miscellaneous proceeding number 14-1.

**The Committee recommended that when a Standing Order is abrogated, the caption and number of the Standing Order should be included in the next publication of the Local Rules with an indication that it is "Abrogated." In subsequent publications, abrogated Standing Orders should be eliminated from the published booklet.**

*Chapter 13 Trustee Fees*

The Committee discussed at length whether to amend the language governing Chapter 13 trustee fees in Standing Order 11-3, Section V.A.

**The Committee recommended against modifying the language governing Chapter 13 trustee fees that was adopted by Standing Order 14-4. It also recommended an explanatory footnote be added to explain that effective December 9, 2014, D. Kan. Bk S.O. 14-4 amended D. Kan. Bk S.O. 11-3 to conform the language to the new interpretation of 28 U.S.C. § 586(e), which allows a variable percentage fee.**

### *Possible Amendment of Local Bankruptcy Rule 9037.1(c)*

Motions to Redact are automatically filed under seal, so CM/ECF cannot serve a copy of the motion upon other parties electronically. Jill Michaux reported that on occasion she (as debtor's counsel) was not served a copy of the creditors' motion to redact, even though the certificate of service stated that she was. She was not sure whether the copy did not reach her because it was lost in the mail or because creditors' staff did not realize that service of a motion to redact must be served outside of CM/ECF in order to be received. Jill Michaux said no amendment to LBR 9037.1(c) is required. In fact, she said she had submitted our local rule as a model to the Rules Committee. No further action on this issue was recommended.

### *Rules Committee Report*

Jill Michaux reported on the recent activities of the Bankruptcy Rules Committee. The biggest news was the fact that the bankruptcy forms are changing effective December 1, 2015. She also reported that during the October 1, 2015 meeting, the national Chapter 13 plan and the so-called "compromise" were discussed. The compromise would allow each district to opt out of the national form plan if the district adopts one local form plan. The national form plan and accompanying rule changes have been drafted but are not being sent to the Standing Committee yet because at least one group representing consumer debtors asserted it had not been at the table during compromise discussions. Discussions are ongoing with that group, and there is some expectation that the compromise will be adopted. Opinions about the compromise remain mixed.

She further reported that new rules are being proposed to address *Stern* and *Wellness* issues. It was noted that our Court has already addressed this issue locally by including express language about the Bankruptcy Court's jurisdiction in the Court's scheduling and pretrial orders.

### *Designating Payments to Unsecured Creditors in the Chapter 13 Plan*

One creditor's attorney recommended that it would be helpful for Chapter 13 plans to disclose the amount that will be distributed to unsecured creditors. Debtors and Chapter 13 trustees commented that it is nearly impossible to forecast with accuracy what amount will likely be available for distribution to unsecured creditors because circumstances in the case typically evolve as the case progresses. It was also noted that in districts where more precise statements about distribution amounts are included in the plan, procedures become more complex, unwieldy, and expensive because multiple plan amendments are required.

*Proposed Additional Standard Language in All Chapter 13 Confirmation Orders*

Laurie Williams explained that to prevent Chapter 13 trustees from being estopped from challenging security interests and secured claims filed after confirmation of a plan, the Chapter 13 trustees have recommended that the following language be included in standard confirmation orders. That way trustees' and debtors' protective objections to plans in cases where secured claims have not yet been filed can be resolved without delaying confirmation.

The confirmation or modification of a plan by virtue of this order shall neither prejudice nor estop the chapter 13 trustee, the debtor, nor the bankruptcy estate from the following actions with respect to secured debts for which no proof of claim has been filed before the date of this order: (1) challenging the validity, enforceability, and/or perfection of the lien(s) or security interest(s); (2) objecting to the allowance of such claims when or if filed; or (3) requesting reclassification of such claim(s).

This language is currently being inserted into plans confirmed by Judge Nugent. Questions were raised about whether this language opens the door to an argument that the confirmation order is not a final judgment on all issues.

**The Committee supports the proposed language change in confirmation orders and recommends its adoption.**

Jill Michaux commented that under new rules being considered, secured creditors will be required to file a claim if they want to be paid.

*Further Discussion of Standing Order 15-4*

Standing Order 15-1: David Zimmerman recommended that Standing Order 15-1 governing Debtor Electronic Bankruptcy Noticing (DeBN) be abrogated after Interim LBR 9036.1 is adopted as a permanent local rule after notice and comment. The order of adoption, which will adopt the final local rules after publication, could be the procedural mechanism to abrogate Standing Order 15-1. Thus, abrogation of Standing Order 15-1 should not be included in Standing Order 15-4.

The changes being made by Standing Order 15-4 will be published for comment and become permanent rules effective March 17, 2016, assuming no comments are received that warrant further consideration of the proposed changes.

**The Committee agreed to recommend abrogation of Standing Order 15-1 once Interim LBR 9036.1 is adopted by an order of adoption as a permanent local rule.**

Standing Order 15-2: David Zimmerman recommended that Standing Order 15-2 be abrogated because its provisions are being incorporated into Standing Order 15-4.

**The Committee recommended that Standing Order 15-2 should be abrogated by Standing Order 15-4.**

Standing Order 15-3: David Zimmerman recommended that Standing Order 15-3 not be made a permanent local rule because it is merely an administrative order governing Court Registry Investment System (CRIS), the program now used by the Court to manage registry funds.

[Editor's note: after the conclusion of the meeting some other minor grammatical editions were also made to the Local Bankruptcy Rules. Those changes were noted on the attached draft, circulated to the Committee, and approved along with these minutes.]

**The Committee agreed to recommend draft Standing Order 15-4 and the revised versions of the Local Bankruptcy Rules and Standing Orders attached to it. A copy of draft Standing Order 15-4 is attached to these minutes.**

#### *Interpreters*

David Zimmerman explained that the District Court had approached the Bankruptcy Court to see if using Bench Bar Funds to pay for certain interpreter services for court hearings might be beneficial to the Bankruptcy Court. It was noted that telephonic interpreter services are used routinely by the Department of Justice for 341 meetings with great success at a reasonable price. Concerns were voiced that using ad hoc interpreters (like a debtor's friend or family member) for court hearings may be unreliable, so using Bench Bar Funds to pay certified interpreters to translate testimony of non-English speakers for the trier of fact could be a great benefit to the Bankruptcy Court.

**The Committee recommended that the Bankruptcy Court should request the use of Bench Bar Funds to provide interpreters when it would benefit the trier of fact.**

#### *341 Meeting Schedule*

Emily Metzger noted that an attorney had posted questions on the bankruptcy listserve about 341 meetings and the order in which the trustees called

debtors for their 341 meeting. She advised that she had passed along this information to the U.S. Trustee's Office for consideration.

### *Order of Confirmation Dockets*

Emily Metzger noted that an attorney had recommended that confirmation hearings should be called in reverse numerical order so that the oldest cases are called last. Judge Karlin noted that she calls her afternoon Chapter 13 confirmation docket in reverse order, because that allows less complicated plans to be considered before plans in cases that have required numerous continuances. This suggestion was enthusiastically received by the Committee. It was noted that some Judges call all cases in the same docket, whereas other Judges divide confirmation dockets into cases called for the first time and cases where there have been one or more confirmation hearings. It was also noted that there is a perception that calling the oldest cases first may reward attorneys who have either delayed resolving long-standing confirmation issues (by calling their cases first), or conversely punish attorneys who have relatively newer cases with fewer problems, who then have to wait the longest for their cases to be called.

Judge Karlin will mention this issue to the other Bankruptcy Judges.

### *Amendments to the Federal Rules of Civil Procedure*

Judge Karlin explained that her law clerk had surveyed the upcoming changes to the Federal Rules of Evidence and Federal Rules of Civil Procedure. There are no changes that require amendments to our Local Bankruptcy Rules. Changes of particular interest include: Rule 4 will require service of a complaint within 90 days rather than 120 days; Rule 26 will change to include a proportionality standard for discovery; and Rule 55(c) is also being amended.

The meeting was concluded at 2:15 pm.