

**Minutes of the Bench Bar Committee
Topeka Courtroom 210
November 12, 2013**

Members Present: Emily B. Metzger, Chair
Hon. Janice M. Karlin, Judges Representative
Gary E. Hinck
Wendee Elliott-Clement (new member July 1, 2013)
David G. Arst
Paul D. Post
Laurie B. Williams, Chapter 13 Trustee
Dana M. Milby
Eric L. Johnson
Robert L. Baer, Chapter 7 Trustee

Court Staff Present: David Zimmerman, Clerk
Hugh Zavadil, Chief Deputy Clerk

Members Absent: Joyce Owen, US Trustee Representative

Emily Metzger called the meeting to order at 10:00 a.m. Judge Karlin introduced the new Clerk of the Bankruptcy Court, David Zimmerman. She noted that the Minutes from the previous meeting had been approved via e-mail. She also provided a brief overview of the agenda.

Changes to D. Kan. Rules

Judge Karlin provided a brief overview of the pending rule changes to the U.S. District Courts Local Rules. She also noted that the other judges had been unanimous in wanting feedback from the Bench-Bar Committee regarding the impact of these rule changes. The following is a summary of the discussion.

D. Kan. Rule 7.1–new (f) Motions in Civil Cases

Prescribes how to bring “pertinent and significant authorities” to the court’s attention post- briefing or oral argument. The members discussed that it would seem a party would always want to, and always should, bring “pertinent and significant authorities” to the attention of the court, instead of “may,” but no one proposed that we should offer anything different in the bankruptcy section of the rules.

D. Kan. Rule 16.2 Pretrial Conferences

Provides for a more streamlined, or at least more tailored, pre-trial process. The U.S. District Court also revised its Pre-Trial Order form. It is still much more detailed/lengthy than the Bankruptcy Court’s approved Pretrial Order form.

D. Kan. Rule 26.1 Completion Time for Discovery

This Rule, which required parties to “complete discovery within 4 months after the case

becomes at issue” or “within 4 months after the court issues its Rule 16(b) scheduling order” has been abolished by the District Court. There was considerable discussion about whether the lawyers on the Bench Bar Committee believed that 4 months was, in fact, an appropriate guideline for most adversaries or contested matters. It was generally agreed that 4 months is adequate time for most cases, and the members acknowledged that the courts were good about extending that time if the parties explained why more time was needed in the Report of Parties’ Planning Meeting. Ultimately, the Committee agreed we should keep, unrevised, our own D. Kan. LBR 7026.1(b), which preserves this 4-month guideline for practitioners in the Bankruptcy Court.

D. Kan. Rule 56.1–new (f) Summary Judgment Motions

This new subsection requires any represented party seeking summary judgment to separately serve and file a form notice on an unrepresented party advising them, of the duties they have and the consequences they may suffer, for ignoring a summary judgment motion. Judge Karlin indicated she would enforce this rule in her cases.

D. Kan. Rule 83.1.1 Amendment of Rules

This changes the location of the notice for proposed adoption of amendments to the rules from the *Journal* of the Kansas Bar Association to the court’s own web site. After discussion, it was agreed that we should not make any change in this for bankruptcy rule changes, as this is a better place to publish this for several reasons.

D. Kan. Rule 83.5.3(e) and (f)

The change in these two subsections is to allow for payment from the Bar Registry funds for out of pocket expenses that have not been recovered (as opposed to a much larger “recoverable” standard) by appointed counsel. A new subsection (f)(6) requires reimbursement to the Fund if money is later recovered. Since we do not have appointed counsel in bankruptcy cases, this should not have any impact on our practice.

New D. Kan. Rule 83.5.8 Limited Scope Representation in Civil Cases

This allows a lawyer to limit the scope of representation “if the limitation is reasonable under the circumstances and the client gives informed consent in writing,” requiring compliance with Kansas S.Ct. Rule 115A (noting that 115A(c), which appears to allow ghost-writing, does not apply in our District). Subsection (b) says “The Bankruptcy Court may have additional Local Rules that govern its limited scope of practice.”

The group discussed the American Bankruptcy Institute’s Best Practices for Limited Services Representation [which suggests this should only apply in Chapter 7 cases], as well as numerous facets of the proposed U.S. District Court Rule. After considerable discussion, Emily Metzger, David Arst, Wendee Elliott-Clement and Dana Milby were appointed to a sub-committee to draft a proposed rule to address Bankruptcy Court concerns pertaining to limited scope representation. It was suggested that the proposed rule could be initially adopted by a Standing Order. The group spent a great deal of time discussing what was considered to be “core duties” of all Chapter 7 counsel, and Judge Karlin emphasized that the judges have been very reluctant to allow attorneys to “unbundle” core services (such as reaffirmation agreements, etc.).

D. Kan. LBR 4002.3-related Form Revision

Emily asked the CM/ECF system-generated Order To Debtor-In-Possession Respecting Report and Payment of Federal Taxes be updated to reflect the current address for filing Federal Income Tax Returns. That address is:

Internal Revenue Service
ATTN Insolvency/Advisory
2850 NE Independence Ave
Stop 5334 LSM
Lees Summit MO 64064-2327

Hugh agreed to amend the system-generated order [and has done so since the date of the meeting].

National Form Plan Update

Laurie Williams briefly discussed the National Form Plan and related Federal Rule changes. Those Rule changes are necessary to implement the Form Plan and are currently available for public comment through February of 2014. The Form Plan and the proposed Rules can be found at the link below. Members of the Bar are encouraged to review the proposed changes and submit comments on or before February 15, 2014. Judge Karlin had recently met with Judge Wedoff, chair of the committee proposing the plan, and he indicated that although they will review every comment, those areas receiving more numerous comments will likely get even closer scrutiny. Here is the link to where you make comments, and you can view the comments already made before submission.

<http://www.uscourts.gov/RulesAndPolicies/rules/proposed-amendments.aspx>

Notice of Fees Under Fed. R. Bankr. P. 3002.1

Wendee Elliott-Clement noted that creditors are sometimes very nervous about Fed. R. Bankr. P. 3002.1 (which requires notice of payment changes, fees, expenses, charges, etc.) and often err on the side of caution and file Notices of Fees in cases where the home mortgage is being paid outside the Chapter 13 Plan. Since the plan does not provide for the Chapter 13 Trustee to pay the home mortgage, some of the Trustees object to the Notice just so everyone (especially the Debtor and counsel) will know that the Trustee is not going to pay any claim. Wendee Elliott-Clement will draft a proposed local rule to address this situation for the group's consideration. She will also work with Laurie to ensure that the proposed local rule addresses the concerns of the Chapter 13 Trustees.

Proposed Amendment to the Appendix to D. Kan. LBR 5005.1

Hugh proposed, on behalf of the Clerk's Office, a minor amendment to the Appendix to D. Kan. LBR 5005.1. The purpose is to permit implementation of the revisions to Fed. R. Bankr. P. 1007 which take effect December 1, 2013. Emily moved and Gary seconded a motion to recommend the change. The motion was passed unanimously.

New Fee for Motions to Sell Free and Clear

Judge Karlin briefly explained that a new Miscellaneous Fee will become effective December 1, 2013. This fee is for motions to sell property free and clear of liens under 11

U.S.C. § 363(f). There is no provision to defer or waive this fee (as there is for adversary proceedings for trustees, for example).

CM/ECF Addresses

Emily explained that there was a recent thread on the bk-listserv regarding preferred address substitution for creditors. Hugh explained that under 11 U.S.C. 342(f) creditors can file a preferred address. The preferred address can apply nation-wide, to a particular district, or even to a particular case. In the District of Kansas these preferred addresses are filed in the National Creditor Registration Service (N.C.R.S.) pursuant to D. Kan. LBR 2002.1(d). Hugh also pointed out that data from the court's CM/ECF system is analyzed, substituted where appropriate, and merged in real-time with data from N.C.R.S. to direct notices queued to the BNC to a creditor's "preferred" address. He also noted that the PACER Creditor List report (Reports>Creditor List from the CM/ECF main menu) also does an on-line real time merge of the two systems' data to produce a printable matrix with substituted "preferred" addresses. So contrary to the suggestion in the listserv, the Kansas bankruptcy court does not have a list of "secret" addresses, does not maintain that list, and that list (where it does exist) could literally change every day since creditors can change the address they wish to use whenever they wish.

The meeting was adjourned at 12:57 p.m.