

**Minutes of the Bench Bar Committee
Topeka Courtroom 210
September 24, 2012**

Members Present: Emily B. Metzger, Committee Chair
Hon. Janice M. Karlin, Judges Representative
Lee W. Hendricks
Jay D. Befort, US Trustee Representative
Gary E. Hinck
Robert L. Baer, Chapter 7 Trustee
David P. Eron
Paul D. Post
Jan Hamilton
Dana M. Milby
Eric L. Johnson

Court Staff Present: Hugh Zavadil, Clerk's Representative

The meeting was called to order at 10:10 a.m. Emily Metzger welcomed the Committee. Emily explained that the minutes from the March 21, 2012 had been approved via electronic mail. New members of the Committee were welcomed and introduced.

Agenda Items

1. A draft revision to D. Kan. LBR 7054.1 had been previously circulated via email for comment. The Committee voted unanimously to recommend adoption of the proposed revision, which eliminates subsection (c) of the Rule.

2. The group considered a series of proposed revisions to the Chapter 13 Form Plan. The first proposal¹ dealt with post-confirmation foreclosures. Paul Post noted that currently debtor's counsel must file a Motion to Modify the Plan (to clarify that the deficiency, if any, should be discharged) when real property surrendered pursuant to the plan is foreclosed (See Form Plan ¶ 8). Jan Hamilton noted some of the competing interests that drive this proposal. After an extended discussion, it was decided that this situation would

¹ "If during the pendency of this case, a mortgage loan holder obtains relief from stay and forecloses its mortgage loan on the collateral resulting in sale of the collateral at sheriff's sale, any remaining debt owed on such mortgage loan will be treated as general, unsecured debt and discharged upon completion of the case." OR "If during the pendency of this case, the holder of a secured claim obtains relief from stay and forecloses its lien on the collateral resulting in sale of the collateral, any remaining debt owed on such claim will be treated as general, unsecured claim and discharged upon completion of this case. In order to participate in any distribution to unsecured creditors, the holder of the claim must amend its claim within ___ days of the sale of collateral."

be better addressed in a modified plan (and/or in the language of any Order Granting Stay Relief), and the proposed language was not adopted.

3. Next, Paul introduced a discussion to amend paragraph 3(b) of the form plan to include explicit designation of case closing fees. This is to clarify, especially in cases where a debtor has paid counsel all fees up front, that the attorney has already been paid for end of case work. The proposal received unanimous support; it only adds one line to the plan. Hugh was directed to make the change to the form plan documents and to draft a Standing Order to adopt the revisions.
4. The next proposed revision to the Form Plan would strip the lien of any creditor who refuses to take property abandoned by the Plan.² The consensus of the group was that such a provision would not conform to existing case law, and that it is not provided by the Code.
5. Three different revisions to paragraph 8 were discussed.³ After extended discussion, the following redline language was adopted, and the other changes were rejected:

RELIEF FROM STAY REGARDING PROPERTY TO BE SURRENDERED: On Plan confirmation, any creditor may repossess, foreclose upon, sell or obtain possession of the property the Plan proposes to surrender without obtaining stay relief. This provision does not prevent the earlier termination of the stay under operation of law or court order. Nothing contained in this section operates to *permit in personam relief*, modify any applicable co-Debtor stay or to abrogate Debtor's rights and remedies under non-bankruptcy law. The trustee shall not make distributions on account of any secured claim in this class.

New Business/Non-Agenda Discussions

6. After a brief discussion of Employer Pay Orders, Judge Karlin suggested that anyone having problems should collect several examples, send them to the Divisional Deputy In

² “Any secured creditor listed who does not retrieve property to be surrendered under the plan within ninety (90) days after confirmation, creditor will be deemed to have abandoned their lien to the property and the confirmation order will constitute a release of lien. Debtor will be authorized to dispose of the property without further claim of the creditor. “

³ Three parts were considered: 1) “This provision does not permit in personam relief of any kind against the Debtor; 2) The surrender of assets under this provision shall constitute full satisfaction of the claim secured by such collateral, unless within ___ days after confirmation, the claim holder shall submit a claim for any deficiency balance; and 3) If the holder of a claim secured by property to be surrendered under the plan fails to take possession of its collateral with ___ days after confirmation, the claim holder shall be deemed to have abandoned its lien. Debtor may thereafter submit an appropriate order stating that such lien has been abandoned.”

Charge of the pertinent Clerk's office, and, if necessary, meet with Clerk's office staff to discuss how to solve whatever problem exists.

7. Jan Hamilton noted that a direct bill payment system for trustee payments is being developed in Topeka.⁴ Other Chapter 13 Trustees are considering similar functionality.
8. Judge Karlin discussed the proposed District Court Rule regarding Limited Scope Representation. Judge Berger will serve on a committee to do further work on this proposed rule. Dave Eron volunteered to represent the Bankruptcy Bench Bar committee on that committee.
9. The Topeka docket changes were discussed. It was the consensus that the changes were effectively reducing the length of the dockets.
10. Jan Hamilton requested video evidence presentation demonstrations at each of the respective bar groups. Hugh will try to arrange these sessions. He also noted that anyone wishing to use the video evidence presentation system can call the local Clerk's office to arrange training.
11. Eric Johnson suggested a local rule to handle noticing Rule 2004 Examinations. Judge Karlin suggested that Eric draft a possible revision and circulate it via email. The committee can then vote via email whether to adopt the proposal. To get it in the next edition of the published local rules, it would need to be adopted by November 14, 2012.
12. The conduit payment Standing Order 11-3 was discussed. It is working well. It has forced debtors to address early in the Chapter 13 process whether they can actually afford the house. Despite higher trustee fees, the process does allow debtors to save on late payment fees, etc.

The meeting was adjourned at 11:46 a.m.

⁴ After the meeting, Mr. Hamilton supplied the following web address for the bill pay service he is considering: <https://www.tfsbillpay.com>.