

**Minutes of the Bench Bar Committee
Topeka Courtroom 210
May 20, 2013**

Members Present: Hon. Janice M. Karlin, Judges Representative
Joyce Owens, US Trustee Representative by telephone
Gary E. Hinck
Wendee Elliott-Clement (new member July 1, 2013)
David P. Eron
Paul D. Post
Jan Hamilton
Dana M. Milby
Eric L. Johnson

Court Staff Present: Ja`net Miles, Judicial Intern
Hugh Zavadil, Acting Clerk

Members Absent: Emily B. Metzger
Lee W. Hendricks
Robert L. Baer, Chapter 7 Trustee

Judge Karlin called the meeting to order at 10:00 a.m. Judge Karlin announced that committee chair, Emily Metzger was ill and unable to attend the meeting. Judge Karlin also noted that Lee Hendricks, an out-going member of the committee, was unable to attend.

Judge Karlin introduced Wendee Elliott-Clement as a new member of the committee, Ja`net Miles, Judicial Intern, and announced that David Arst and Laurie Williams were also recently appointed to the group. She also presented Dave Eron and Jan Hamilton with Certificates of Appreciation for their service on the committee.

Courthouse Attire

Judge Nugent asked to have the committee discuss whether action should be taken to upgrade the formality of attorney attire, specifically at 341 meetings. He had received a complaint from a trustee about some attorneys appearing in less than professional attire, including at least one attorney who appeared wearing jeans and a t-shirt. After discussion, it was the consensus of the committee that these minutes should reflect that because 341 meetings are court business, the judges do expect some level of professional attire at those sessions.

***Stern v. Marshall* Issues**

Judge Karlin next introduced a discussion of pending Federal Rules changes pertaining to issues governed by *Stern v. Marshall*. Judge Karlin indicated that the judges are considering

adopting a Standing Order to sooner adopt the proposed revisions to Fed. R. Bankr. P. 9033.¹ After a lengthy discussion, the committee also unanimously recommend adopting a Standing Order to adopt the proposed amendments to Fed. R. Bankr. P. 7012(b), 7008 and 7016 before those rules would become effective through the national rules adoption process. [Judge Karlin has advised that at the time of the drafting of these minutes, the Judges have met and have decided to only adopt by standing order (at this time) the revisions to Rule 9033. This is due to some minor concerns about the federal rule making/comment process, coupled with the admitted rarity of the “core but no authority to enter final order” scenario to which these rules amendments are aimed].

Limited Scope Representation

The U.S. District Court is considering revisions to enable limited scope representation. A number of concerns and reservations were expressed about the concept of limited scope representation in bankruptcy cases. Judge Karlin noted the proposed provisions dealing with “ghostwriting.” No position was recommended on this issue.

D. Kansas Chapter 13 Form Plan

Judge Karlin asked the group to consider whether any portions of the nation-wide form plan should be adopted and incorporated into our local Chapter 13 Plan. After an extended discussion, the consensus of the group was to leave the local form plan unchanged.

Judicial Branch Budget Issues

Judge Karlin discussed the general nature of the budget issues facing the Federal Judiciary in upcoming years. She noted that budget issues will likely impact the level of service provided by the Clerks’ offices and may impact the way the Court directs noticing. She explained the recent Judicial Conference initiatives relative to Shared Administrative Services. Various committee members offered a number of possible cost-saving measures, including:

- Issuing an Order to Show Cause instead of a Notice of Order Due
- Letting Motions languish if Orders are not timely filed
- Requiring Proposed Orders to be submitted with Motions
- Simply deny Motions for which Orders aren’t timely uploaded
- Stop Issuing Orders to Correct

BNC Noticing Review

Judge Karlin gave a brief overview of the 2011 Noticing Review. This is a district-by-district summary of the mailing costs per case for which the judiciary budget is responsible. Our Clerk’s office, in comparison with almost every other district, pays for more noticing than a

¹ The language of the 9033 standing order is likely to be as follows: In all proceedings in which the bankruptcy court has determined that it may not enter final orders or judgments without consent of the parties, and all parties have not consented, Federal Rule of Bankruptcy Procedure 9033 shall apply. The bankruptcy court shall file proposed findings of fact and conclusions of law, and Federal Rule of Bankruptcy Procedure 9033 shall apply to review of those findings and conclusions.

majority of other districts. Other districts tend to require the parties—debtors, creditors, trustees—to be responsible for the cost of many more mailings, thus reducing the mailing costs to the judiciary. After a brief discussion it was decided that the Clerk’s Office should update the prior Noticing Review and seek guidance from the Bench-Bar Committee if any particular issues are identified.

D. Kan. LBR 6007.1

Eric Johnson led the discussion. Chapter 7 Trustee Eric Rajala had contacted him to bring to the committee’s attention the recent 10th Circuit decision in *Cook v. Wells Fargo*, 2013 WL 1297590 (April 2, 2013) (10th Cir. 2013). That decision can be read to suggest our LBR 6007.1 procedure to allow Chapter 7 Trustees to abandon assets pursuant to 11 U.S.C. § 554 is inadequate. *Cook* requires courts more expressly set the deadline for objecting to any notice of intent to abandon, and that courts allow a hearing once an objection is filed. Although we had a notice at the bottom of the back page of our B9A Notice of Meeting of Creditors form that discussed Rule 6007.1, and although the Court’s practice is to set a hearing, we were concerned that might not be enough under *Cook*. After a brief discussion, Eric moved and David seconded that we adopt the proposed modifications to D. Kan. LBR 6007.1.² The motion passed unanimously. [The judges do not intend to adopt a standing order on this, but will instead allow for the general notice and comment period. The revisions will thus likely become effective in March 2014. Because the current practice is to allow a hearing, and because we have now amended our B9A form [Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines], the judges did not believe the earlier adoption by standing order was necessary].

ePOC Demonstration

Hugh demonstrated the Electronic Proof of Claim (ePOC) software developed by the Middle District of North Carolina. The group expressed concern that the system, which does not require user authentication, would permit debtors to surreptitiously amend claims filed by

² D. Kan. LBR Rule 6007.1 would now look like this:

a. Deadline for Objecting to Abandonment. When the clerk of the court provides the Notice of Bankruptcy Case, Meeting of Creditors and Deadlines, the Notice must contain a provision that within 60 days from the conclusion of the meeting of creditors held under 11 U.S.C. § 341, the Chapter 7 trustee may file notice of intended abandonment of any or all of the debtor's property in the estate as authorized by 11 U.S.C. § 554 without further service on creditors or interested parties. Unless a creditor or interested party objects to abandonment within 75 days after the conclusion of the meeting of creditors, the property subject to the intended abandonment will be deemed abandoned without further notice or order of the court.

b. Procedure if timely objection. If a creditor or party in interest timely objects, the court will schedule a hearing. The property that is the subject of the objection to the intended abandonment will not be deemed abandoned until the objection is resolved by court order. All other property subject to the intended abandonment, however, will be deemed abandoned without further notice or court order.

creditors. Hugh agreed to do some further investigation about the system to see if these issues might be addressed.

The meeting was adjourned at 1:51 p.m.