

**Minutes of the Bankruptcy Bench Bar Committee
November 9, 2022**

Members Present: Hon. Robert D. Berger, Judges Representative
J. Christopher Allman, Chair, US Attorney's Office
Jordan Sickman, US Trustee's Office
Patricia Hamilton, Chapter 7 Trustee
William Griffin, Chapter 13 Trustee
with Karie Fahrenholtz
Kevin Grauberger
Nancy Skinner
Kathryn Sheedy
January Bailey
Jill Michaux
Ryan Blay

Court Staff Present: David Zimmerman, Clerk of Court
Joyce Ridgeway, Chief Deputy Clerk

The meeting commenced at 10:12 am.

I. Old Business

A. Minutes.

The Committee previously approved the minutes of the May 31, 2022 meeting by email. The minutes are posted on the court's public website.

B. Jan Hamilton

The Committee recognized the long and meaningful service of trustee Jan Hamilton, who recently retired.

C. Acceptance of Credit Cards and ACH Payments for Debtor's Filing Fee Installment Payments: An Update from the Clerk's Office

David Zimmerman reported that the Clerk's Office is in the process of testing the program and looks forward to rolling it out in the next few months.

D. Mortgage Modification Mediation Program

Rather than proposing a full mortgage modification mediation program, the Subcommittee (Nancy Skinner, January Bailey and Ryan Blay) proposed a new rule and two new forms (appended to these minutes) for consideration. The Subcommittee discussed ways to streamline the process and overcome hurdles, including making it easier for debtors and

mortgage companies to communicate. They noted that mortgage companies hesitate to communicate with debtors because they have concerns about possible violations of the automatic stay. The proposed rule is intended to clarify that it is not a violation when debtors attempt to discuss a modification with the mortgage company.

LBR 3002.1.2 MORTGAGE LOAN MODIFICATION

- (a) **Scope of Rule.** This rule applies in Chapters 7, 12, and 13, for consumer loan relationships regarding a mortgage on real property or a lien on personal property that the debtor occupies as the debtor's personal residence.
- (b) **Automatic Stay.** It is not a violation of the automatic stay when:
 - (1) the debtor contacts the secured creditor to request information about a loan modification application and the secured creditor responds with such information;
 - (2) the secured creditor communicates directly with the debtor about a loan modification application in process. Debtor's counsel shall be copied on any written correspondence to the debtor.
- (c) **Trial Loan Modification.** If the debtor and the secured creditor reach a trial loan modification, the attorney for either party shall file a Notice of Trial Loan Modification (Local Form XXX).
- (d) **Permanent Loan Modification.** Upon successful negotiation of a loan modification between the parties, counsel for either party shall file a Motion to Approve Loan Modification (Local Form XXX).
 - (1) No objection deadline is necessary if the order is approved by all parties.
 - (2) An executed copy of the loan modification should be attached to the Motion.
 - (3) The Motion and Order shall qualify as the Amended Proof of Claim and the Notice of Mortgage Payment Change regarding the modified payment.
 - (4) If the debtor is paying the secured creditor as a conduit through the bankruptcy case, the payment will continue to be paid by the trustee, absent a plan modification by the debtor.

Under the proposed rule, notice of a trial mortgage modification would be sent, and if the trial modification was successful then a motion would be filed to permanently modify the loan. Nancy Skinner recommended getting input from creditor attorneys about the draft rule and forms. The forms were proposed as samples that attorneys could use voluntarily, not as official local forms that had to be used. Patricia Hamilton suggested clarifying paragraph (a) to indicate that the rule governs personal residences that are claimed as exempt. January Bailey explained that the draft language was taken from LBR 3002.1.1. Bill Griffin said he has some suggestions to improve the draft rule and offered to share them to clarify issues that affect the trustee's office. He expressed support for the rule in concept and said he would want to assure that the trustee could help the debtor qualify for the permanent modification. He also identified other challenges

related to loan modifications, including getting mortgage creditors to amend their proofs of claim. Without a modified claim, he thought he would likely need to object to the claim and obtain clarification that it was impacted by an order granting the loan modification. Judge Berger commented that it would be procedurally smoother if creditors would amend their claims. Bill Griffin also said he had shared the proposed rule with Carl Davis's office to invite his input.

A question was asked whether it would be helpful to create an exception to the conduit rule to allow debtors to make direct payments if a trial modification agreement was in place before the bankruptcy was filed. January Bailey said that option had been considered, but it would take too long for plan modifications to be made and she thought most modifications arose during the life of the plan. It was suggested that the rule include a date by which the trustee must receive payments so that the trustee can make a timely payment to the mortgage creditor, but some thought that should be an issue for debtor's counsel to explain to the debtors.

Bill Griffin will share his office's comments with the Subcommittee. The Subcommittee will contact various mortgage creditor attorneys to seek input about the draft rule. The issue will be considered further at the next meeting.

E. Proposed Changes to LBR 3002.1.1(d) and LBR 4070.1(b)

The specific issue that was carried forward from last meeting was withdrawn because the issue has subsided.

However, because mail delivery has become slower and less reliable, it was proposed that the local rules should be amended to require a creditor to send a notice of default or a written demand for proof of insurance to the debtor's attorney by email.

Jill Michaux will propose language for the Committee to consider.

F. CourtSpeak and Judicial Voice Recorder

David Zimmerman reported that the Judges asked the Clerk's Office to put a hold on the project to docket recordings of selected court proceedings to PACER using CourtSpeak. Meanwhile, the Clerk's Office is the first court in the country to beta test new Judicial Voice Recorder (JVR) software that would allow the court to docket recordings of court hearings that the Judges want to be docketed. Committee members shared that access to recordings docketed to PACER would be convenient, would provide an opportunity for attorneys to learn from others, and would allow people to refresh their recollection of what happened during proceedings. On the other hand, they noted that less costly access could also reduce privacy. Jordan Sickman, on behalf of the United States Trustee, said that they favor making audio recordings available on the docket, the system is already in use in many other courts around the country, and two informal polls at the WBA Bankruptcy Committee luncheon favor implementing it. Judge Berger said the court is still evaluating its position about docketing recordings.

G. Proposed Amendment to LBR 1009.1

This topic was carried forward from the May 2022 meeting. It was proposed that LBR 1009.1 be amended to say:

LBR 1009.1 AMENDMENTS TO LISTS AND SCHEDULES OF CREDITORS AND APPLICABLE DEADLINES

(a) **Notice.** Debtor must serve amendments to Schedules D, E/F, G, or H and matrices on any entity affected by the amendment, the case trustee and the United States trustee, with a notice in compliance with the Notice of Amendment of Schedules D, E/F, G or H (Addition of Creditor(s)) form.

(b) **Verification.** Debtor must sign and verify an amendment in the same manner required for originals.

(c) **Filing Fees.** Debtor must accompany an amendment to schedules or lists of creditors with the applicable filing fee prescribed by the Administrative Office of the United States Courts in effect on the date the amendment is filed.

(d) **Matrix.** Debtor must add new parties included in amended schedules to the matrix in accordance with the instructions published on the Court's website.

(e) **Notice Exception in Conversion Cases.** The Debtor is not required to file and serve the Notice of Amendment of Schedules D, E/F, G or H (Addition of Creditor(s)) form when an Amended Schedule is filed concurrently with the conversion to another chapter if all newly added creditors were added to the matrix and were sent the Notice of Bankruptcy Case issued by the clerk's office.

January Bailey explained that at the time a case is converted to a new chapter, the court issues a notice to all creditors, including new creditors added to the matrix at the time of the conversion. The Committee discussed why there is no need for the debtor to send a separate, duplicate notice (with the full Social Security Number) to a creditor if it was added before the Clerk sends the notice of conversion to all creditors.

It was suggested that the Notice of Amended Schedules D, E/F, G, or H (Addition of Creditor(s)) form needs to be updated so that it does not imply that there is an extended time for filing a claim.

The Committee unanimously recommended that the Court adopt the change to LBR 1009.1 as noted. January Bailey and Jill Michaux plan to review the local form and recommend amendments.

H. Adding Deadlines to Docket Text for Certain CM/ECF Events

Jill Michaux reported that Joyce Ridgeway has been responding to Jill Michaux's suggestions by explaining which CM/ECF events could or could not be modified to include a deadline date in the docket text. This agenda item does not need to be carried forward to future meetings.

II. New Business

A. Discussion of Expanded Use of Text Orders

Joyce Ridgeway reported that in Topeka, attorneys typically prefer to submit a proposed order for the Judge to sign and the Clerk to serve through the BNC because if the court issues a text order then the attorney must serve the order. The Clerk's Office serves orders to the debtor, debtor's attorney, the trustee, the US Trustee (through NEF) and additional parties as needed. Judge Berger said that he likes using text orders for matters beyond mere continuances. When Judge Berger asked for comments, Committee members expressed the opinion that it was a waste to require service of text orders and a certificate of service issued during the "rocket docket." It was observed that most text orders are received by NEF so most parties other than the debtors themselves receive the order by email. It was also noted that there may not always be a moving party when there are agreed continuances, thus it is not always clear which party has the burden of serving the text order. Joyce Ridgeway noted that the Clerk's Office routinely sends notice of text orders to pro se debtors.

Judge Berger proposed that the service requirement language be amended to make it more palatable to counsel and that it makes sense. The list of text only orders that are available are posted as an appendix to the May 31, 2022 meeting minutes.

The Clerk will post the list of text orders to the court's website. This topic will be continued to the next meeting for further discussion. [Editor's note: The list of available text orders and sample language for each order is posted at <https://www.ksb.uscourts.gov/text-orders>.]

B. Chapter 11 Subchapter V Plan Form

Ryan Blay reported that the Western District of Missouri's Bench Bar Committee is currently reviewing model plans for subchapter V cases from around the country. He reported that three jurisdictions have adopted model plans: New Jersey, Maryland, and one or both districts in Wisconsin. He proposed that the bar would benefit from a form that could be used as a structure for attorneys to use. Judge Berger recommended that the court wait until Missouri finish its model plan and then survey the attorneys who have filed subchapter V cases in this district. January Bailey observed that there is a national subchapter V form plan that has not been used. She also suggested that subchapter V cases are sufficiently unique that the plan needs to be flexible. Committee members noted that attorneys who file subchapter V cases already have their own forms and they may be unhappy to have a form plan imposed on them. Those forms could also be shared with new attorneys who want to begin filing subchapter V cases.

When Judge Berger asked about what prompted creation of a form plan in Missouri, Ryan Blay reported that there was support from the US Trustee's Office and debtor lawyers. The idea was to help get the cases confirmed as quickly as possible and to remove minor sticking points so the focus could be on more important issues such as feasibility. Missouri's

next meeting is expected to be held in January and there is hope that the form plan would be ready by next Fall.

Jill Michaux noted that there have been only 31 subchapter V cases filed in Kansas in three years, and there are 15-20 debtor attorneys who filed them. She noted that it took a huge amount of work to create a form plan for Chapter 13 cases, and it was adopted locally because otherwise the national form plan would have been imposed.

This topic will be continued for further consideration after Missouri finishes drafting a form plan. Ryan Blay will advise the Committee when the form plan is ready.

C. Model Forms for the District of Kansas

This topic was continued to the next meeting without substantive discussion.

D. Amendment to Fed. R. Bankr. P. 3002(c)(6)

Jill Michaux invited the Committee to consider whether the most recent changes to the Local Bankruptcy Rules remain consistent with the changes to Fed. R. Bankr. P. 3002(c)(6), effective December 1, 2022.

Chris Allman, Kathryn Sheedy, and Nancy Skinner will review the proposed changes to the federal rules and report whether they identify any impacts on the local rules.

E. Amendment to LBR 4004.1

January Bailey noted that LBR 4004.1 was adopted to streamline discharges in chapter 12 and chapter 13. She proposed incorporating Standing Order 21-2 into LBR 4004.1 so that discharge orders in subchapter V cases would be included in that rule. Judge Berger provided some background about subchapter V cases, explaining that the statute does not technically call for an order of discharge to be issued in a case with a consensual plan because the confirmation order represents the discharge. The Judges issued Standing Order 21-2 to augment the statute to make it clear to creditors that a discharge was issued in those cases. He further explained that the court generally prefers that Standing Orders become part of the local rules.

The Committee recommended (with Judge Berger voting “present”) that LBR 4004.1 be amended as follows:

LBR 4004.1 DISCHARGE IN CASES UNDER CHAPTER 11 SUBCHAPTER V, CHAPTER 12, AND CHAPTER 13 CASES

(a) Chapter 12 and Chapter 13 Cases. Debtor shall file with the Court a combined Certification of Debtor and Motion for Entry of Discharge in order to obtain a discharge upon completion of all plan payments.

(a1) Timing. The Certification and Motion shall not be filed until after the trustee has filed the Notice of Plan Completion.

(b2) Content. The Certification shall be signed by the debtor under penalty of perjury and must substantially comply with the Chapter 13 Debtor's Certifications Regarding Domestic Support Obligations and Section 522(q)(Form B2830).

(e3) Limited Notice Required. The Certification and Motion in Chapter 12 and Chapter 13 cases shall be filed electronically with the Court using the Court's Electronic Filing System and provide 21 days' notice to the following:

(1A) Parties requesting electronic noticing through the Court's Electronic Filing System; and

(2B) Any Domestic Support Obligation (DSO) claim holder and the State child support enforcement agency, if applicable.

(b) Chapter 11 Subchapter V Cases. In a Chapter 11 case if the debtor elected for subchapter V to apply, the debtor must file a motion requesting entry of an order of discharge after the debtor's plan is confirmed.

(1) Timing of Motion. If the plan was confirmed under

(A) 11 U.S.C. § 1191(a) (as a consensual plan) then, within 14 days of the entry of the order confirming debtor's plan, the debtor must file a motion requesting entry of an order of discharge and must submit to the court a simple proposed order stating that the motion requesting entry of an order of discharge is granted, whereupon the court may enter the simple proposed order and then issue a separate order of discharge, or

(B) 11 U.S.C. § 1191(b) (as a non-consensual plan) then, unless the court approved a written waiver of discharge, the debtor must file a motion requesting entry of an order of discharge as soon as practicable after the debtor completed all payments due within the first 3 years of the plan or such longer period not to exceed 5 years as the court had fixed, and the debtor must contemporaneously submit to the court a simple proposed order stating that the motion requesting entry of an order of discharge is granted, whereupon the court may enter the simple proposed order and then issue a separate order of discharge.

(2) Limited Notice Required. No notice and hearing of the motion requesting entry of an order of discharge is required in Chapter 11 Subchapter V cases except that Debtor must serve the motion upon the debtor, the trustee, the US Trustee, all indenture trustees, creditors that hold claims for which proofs of claim have been filed, and parties in interest expressly requesting notice.

F. Deposition Guidelines

Kevin Grauberger noted that in a recent deposition there was a controversy that arose where guidelines would have helped resolve the issue. He asked whether the Bankruptcy Court should adopt the District Court's deposition guidelines. District Court rules clearly apply in Bankruptcy proceedings, but it was less clear whether District Court guidelines also apply.

This topic will be continued to the next meeting. Meanwhile, Judge Berger will consult with the other Judges about this topic.

The meeting ended at 12:10 noon.

CERTIFICATE OF SERVICE

I hereby certify that on XX, 2022, a true and correct copy of this notice was electronically filed with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

Copies of the same were also forwarded on this same day via first class mail, to parties listed on the attached matrix.

(Debtor or attorney signature block)

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS**

In re _____,
Debtor(s).

)) **Case No.** _____
)) **Chapter 13**
))

MOTION TO APPROVE PERMANENT HOME MORTGAGE MODIFICATION

COME NOW Debtor(s), by and through counsel, file this Motion to Approve Permanent Home Mortgage Modification (the “Motion”), and, in support thereof, state(s) as follows:

1. Debtor(s) file their Chapter 13 petition on 00/00/2022.
2. Debtor(s) have a mortgage with _____ (the “Lender”).
3. Debtor(s) and the Lender have entered into a permanent mortgage modification.

The modification begins with the 00/2022 mortgage payment.

4. The terms of the permanent mortgage modification are as follows:

	Current Mortgage Terms	Proposed Mortgage Terms
Principal Balance		
Interest Rate		
Loan maturity date		
Monthly Principal/Interest		
Monthly Tax/Insurance/PMI		

Other: (e.g., balloon payment, interest only payments, etc)

5. Once the permanent modification is approved, the Debtor(s) and/or the Lender will immediately file any amendments of claim or Chapter 13 plan necessary to implement the Agreement.

6. Debtor(s) request this Court approve the permanent mortgage modification and authorize the changes set forth above.

7. Debtor(s) further request this court order the Trustee to stop all disbursements on the on-going mortgage claim if the Debtor is now is paying it directly. Further, the Trustee shall stop all disbursements on any pre-petition mortgage arrearage claims, any post-petition mortgage arrearages, and the initial GAP claim.

8. The Trustee will reset the mortgage claim records upon entry of the order granting this motion base on the changes set forth above.

WHEREFORE, the Debtor(s) request the Court enter an order approving the foregoing Motion to Approve Permanent Home Mortgage Modification.

Respectfully Submitted,

(Debtor or attorney signature block)

CERTIFICATE OF SERVICE

I hereby certify that on XX, 2022, a true and correct copy of this Motion was electronically filed with the Court using the CM/ECF system, which sent notification to all parties of interest participating in the CM/ECF system.

Copies of the same were also forwarded on this same day via first class mail, to parties listed on the attached matrix.

(Debtor or attorney signature block)