

Judge Karlin's Report
from Meeting held April 30, 2012
to increase Chapter 13 docket efficiencies

I reported at a recent Bench Bar Committee meeting that the number of cases on our afternoon Chapter 13 dockets—both the continued confirmation docket held at the end of the month and the Miscellaneous Chapter 13 docket held mid-month—was causing some problems. The main problem I identified was that some unlucky attorneys could get stuck with settings at the beginning and at the end of the docket, causing them to spend 3 to 3.5 hours for their two matters to be heard. I asked two members of the Bench Bar Committee (Paul Post and Lee Hendricks) as well as two other members representing mostly creditors (Wes Smith and Tom Valentine) to meet with me, members of my staff, members of the Clerk's staff, and Jan Hamilton and Teresa Rhodd to help me evaluate the problem and develop some solutions.

Causes of the Problem

We first tried to identify the causes of why there are often so many cases on these dockets. The obvious first answer is that attorneys seek, and I then grant, many (often too many) continuances. This causes cases to get called month after month without effective action between dockets. These continuances are frequently caused by debtors who do not respond to calls and letters from their counsel, attorneys who do not appear to attempt to resolve pending matters until immediately before (or at) the docket—including failure to make an attempt to make telephone or face to face contact with the debtor (or the trustee or the objecting creditor) before the docket—failure to turnover documents that have been ordered to be filed or are obviously needed (e.g., tax returns, BIOCT information, waivers of statute of limitations, conduit payment information, etc.), failure to do what the attorney promised to do the prior month, or failure to do so timely (e.g., filing amended I/J, motions to amend the plan, motion to abate, etc.). Continuances are also occasionally caused by law firms who send lawyers who do not know what their client is doing (e.g., loan modifications, accepting payments in the face of their own motion relief from stay, etc.), or those same firms hiring local counsel who are not informed of client action or action by the firm, itself. And recently, there have been many Motions to Compel turnover of tax returns, which may be a seasonable phenomenon. On that issue, I hope a change in culture will result in many fewer objections being filed so those motions do not end up getting set for hearing.¹

¹ I have recently noted at the docket that unless your client has, in fact, filed the requested tax return such that the motion to compel should be denied, it does not help to file a response that simply indicates that “the debtor is working on the return,” or “the debtor will file the return within a reasonable time,” or “the debtor filed the return but didn’t keep a copy, so is

Suggestions to Cure or Reduce the Length of the Dockets

At the meeting, many suggestions were discussed. Many of those came from the bar as a result of our solicitation of ideas. Those include:

1. Do not announce the names of the debtors/case numbers on the confirmation list—just post the list OR better yet, have the confirmation orders signed before the hearing date (when there are no timely objections) so that the hearing event can be officially terminated on the CM/ECF system;
2. If an attorney has two or fewer cases on the docket, set those cases to the beginning of the docket;
3. Call at the beginning of the docket all cases where a creditor's lawyer appears;
4. Set more “drop dead” deadlines, and follow through with a timely dismissal order if dismissal was the consequence established at a hearing (e.g., cure arrearage or file motion to abate within 14 days or case will be dismissed, get tax return on file within 21 days, or case will be dismissed, file I and J that show debtor can afford the plan increase, or case will be dismissed, etc.);
5. Set contested matters to trial more quickly;
6. Eliminate responses that are so generic as to be unhelpful, such as “debtor will take care of the problem within a reasonable time;” instead, require the pleading to indicate debtor's plan to resolve the problem;
7. Recognize cases that need greater than one month for something to be done or to happen, and continue the case for the correct period of time (e.g., continue for 2 months instead of 1 when waiting for a refund

trying to find a copy from H&R Block,” or “the debtor can't locate his W-2.” These responses effectively admit the return is due; their only purpose is to explain why debtor hasn't already done what is required, and potentially how much longer it will be before the return is produced. Such responses appear to be aimed at buying the debtor time, and if the only purpose of a pleading is for the purpose of delay, there may be ethical issues that accompany such a response. *See, e.g., Kan. Rules of Prof'l Conduct 3.1* (“A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous . . .”). The far more efficient response is to contact the Trustee indicating that you will either approve the order granting the motion to compel (or, better yet, not object to it in the first instance), but that the debtor needs “x” number of days to comply, outlining the problem. And if the debtor is not required to file a return, the appropriate response is to file a tax affidavit so stating, signed by your client under penalty of perjury along with any response to the motion to compel. This typically results in the Trustee withdrawing the motion to compel.

- check for return just filed, or real property has to be sold and there is a contract signed, etc.);
8. Continue to discourage responses on motions to compel (see n.1, above) when the response's real purpose is merely to buy debtor more time;
 9. Reverse the order cases are called on the afternoon confirmation docket, under the assumption that the oldest cases on the docket have had the most continuances, are likely more problematic, and other attorneys should not have to wait for yet another argument on the aging case;
 10. Set a deadline before which attorneys can ask the Trustee to orally announce continuances (e.g., at least 24 hours before commencement of the docket), with result being attorneys would have to attend the docket themselves to ask for a continuance if they do not make contact with the Trustee by that cutoff time. This would also potentially allow the Trustee to get a list of cases to the Clerk and chambers where the Trustee recommends a continuance so those hearings could be "terminated" by the Clerk with a text order of continuance so the matter would not need to be called/appearances entered, continuance orally requested with explanation why needed—all of which consume time;
 11. Figure out a way to encourage attorneys who are dilatory in preparing for dockets to prepare farther in advance, and to return phone calls or emails from opposing counsel to resolve issues in advance of the docket;
 12. Encourage attorneys to carefully review the Trustee's "after-docket" summary, which typically shows what happened on each case at the docket, and any action required;
 13. Have a courtroom deputy available 20 minutes before the docket, as we do in Chapter 7 cases, to take continuances;
 14. Separate motions to dismiss for non-payment from other motions on a miscellaneous docket;
 15. Separate out cases where someone other than Trustee is objecting (since Trustee has to be there for whole docket anyway), and call those cases first;
 16. Schedule the docket based on the number of cases each attorney has on the docket, smallest to largest;
 17. Have the Clerk run the docket as early as possible after the cutoff date for objections so the Trustee has additional time to work up the cases;
 18. Identify cases early with several difficult issues, or which have several lawyers, and continue those before the docket to a status conference;
 19. Discourage setting matters straight to the docket (without an objection deadline), as those cases will have to be called when there might otherwise be no objection.

Considerations mitigating against adoption of some suggestions

Many of the suggestions, while excellent, are not practical or advisable as a result of some of the following considerations:

1. The length of time it takes the Trustee to thoroughly prepare for the dockets (and the need for uninterrupted and sometimes weekend time);²
2. Our CM/ECF program, which does not allow the Clerk to easily sort by attorney, or to identify how many cases a particular attorney has on a docket (without hand counting, which is inefficient);
3. The chambers automation program (CHAP) I use to prepare for each hearing (on which I take notes before hearings and which I consult and on which I take notes during hearings). CHAP does not allow me to move quickly between cases unless they are contiguous—and even then the system is sometimes very slow. I’m not eager to go back to the paper world if we can avoid it;
4. Placing all cases for larger volume filers at the end of the docket just requires creditors in those cases to wait until the end, PLUS, the debtors’ lawyers might not elect to arrive before the docket is called—eliminating a chance to make deals prior to the docket (assuming it is proper to wait until that late in the first instance!);³
5. The length of time it takes for the Clerk (and the fact we cannot

² As an aside, this Trustee saves all our practitioners (and me) time by 1) thoroughly preparing for dockets and disseminating clear notes a few days before the docket about the status of each case and what remains to be done; 2) using that thorough preparation to be able to quickly summarize issues during hearings; and 3) following through after the docket with “after-action” notes that are again disseminated so that practitioners can take immediate steps (so as to be able to avoid future continuances on their cases). The Trustee also often sends letters to those attorneys who, without excuse, have simply failed to appear on the docket or contact the Trustee in advance, to advise what that attorney missed and what needs to be done. This latter category of work should not be necessary; no attorney should need that kind of “babysitting” by a Trustee.

³ I am well aware we have a few “docket day practitioners,” meaning those attorneys who wait until immediately before the docket to return calls, seek continuances from the Trustee, attempt to contact their clients, negotiate deals, etc. Lawyers who practice this way (and luckily, we have very few of them) cost every other lawyer, the Clerk’s staff, and this judge, precious time. They should be discouraged from taking bankruptcy cases, since this practice, because of its volume, requires a more organized approach. And if these lawyers wish to remain a bankruptcy practitioner but cannot handle their business in a more timely manner, they should accept fewer cases.

always immediately spare a courtroom deputy to do this) to terminate hearings so they do not get called (for last minute continuances).

Conclusions

We are going to take “baby steps” to try to reduce the size of these dockets and decrease the total time attorneys will have to spend waiting for matters to be called. Here are the solutions we are going to implement immediately:

1. Reverse the order we call the afternoon confirmation docket;
2. Run the docket on Wednesday instead of Thursday so the Trustee’s office can get a head start on its preparation;
3. Discontinue reading the names of the debtors/case numbers on the confirmation list—just post the list (OR better yet, have the confirmation orders signed before the hearing date when no objections have been filed, if the Trustee’s schedule/systems allow);
4. Encourage Trustee to abbreviate oral entry of appearance;
5. Continue to set more “drop dead” deadlines, and follow through with a timely dismissal order if dismissal was the consequence established at a hearing;
6. Set more back up trial dates to encourage reasonably prompt negotiation (e.g., if you don’t get a valuation worked out, the appraisal/valuation evidence will be heard on particular stacked docket days);
7. Recognize cases that need greater than one month for something to be done or to happen, and continue the case for the correct period of time (e.g., 2 months instead of 1 when waiting for refund check for return just filed or real property has to be sold and there is a contract signed, etc.);
8. Continue to discourage responses on motions to compel (see n.1, above) when the response’s purpose is merely to obtain a hearing for the purpose of delay;
9. Discourage setting matters straight to the docket (without an objection deadline), as those cases will have to be called when there might otherwise be no objection;
10. Identify early those cases with several difficult issues, or which have several lawyers, and which may take more than 2-3 minutes on the docket, and continue those before the docket to a status conference; and
11. Encourage attorneys to carefully review the Trustee’s “after-docket” summary for your cases, so if you were not at the docket, you can get a quick start on solving the problem that is delaying resolution of the matter.

Thank you

I wish to thank the lawyers who took time to make suggestions, and those who participated in the meeting. If anyone has additional ideas, please feel free to send them to me, as I wish to consider all practical and effective ways to make these dockets run more quickly. We will give these a try and re-evaluate periodically.

Jan Karlin
May 3, 2012