

**Minutes of the Bankruptcy Bench Bar Committee  
Video Conference  
October 18, 2021**

Members Present: Hon. Robert D. Berger, Judges Representative  
J. Christopher Allman, Chair, US Attorney's Office  
Chris Borniger, US Trustee's Office  
Patricia Hamilton, Chapter 7 Trustee  
Carl Davis, Chapter 12 Trustee and Chapter 13 Trustee  
January Bailey  
Jill Michaux  
Nancy Skinner  
Kevin Grauberger  
Robin R. Randolph  
Kathryn E. Sheedy

Court Staff Present: David Zimmerman, Clerk of Court  
Becky Nahr, Financial Specialist  
Doug Burnette, IT Specialist

The meeting commenced at 1:30 pm.

**I. Old Business**

*A. Minutes.*

The Committee previously approved the minutes of the June 16, 2021 meeting by e-mail. The minutes are posted on the court's public website for the bar at large to review.

*B. Acceptance of Credit Cards and ACH Payments for Debtor's Filing Fee Installment Payments*

This topic was carried forward from the Spring 2021 meeting, when the question was asked whether the court should begin to accept credit cards and ACH (automated clearinghouse) payments for Chapter 7 fee installment payments. Becky Nahr, the Bankruptcy Court's Financial Specialist, reported that the court has the option to set up a system that would allow people to make payments to the Bankruptcy Court using Pay.gov by following a link that could be posted on the court's website. Debtors and others could make payments by credit card, debit card, ACH, or PayPal, depending upon which payment options the court decided to authorize. Making a payment required the payor to enter the payor's name, telephone number, the case number, payment amount, and payment method. The court does not retain payment account information. So far, it appears that no transaction fees are required. The court may opt to set up computer terminals in the public counter areas where these online payments can be made. When asked whether the system could prevent the court from being turned into a creditor, David Zimmerman explained that the system can disallow someone from using a credit card, but it does not guarantee that someone could not overdraw an account linked to a debit card.

Although technical questions about the system are largely answered, there may be policy questions that remain. Some Committee members were concerned about allowing PayPal. Some Committee Members explained that they frequently make fee installment payments on behalf of their clients, and it was noted that attorneys could use the Pay.gov system to make such payments. When asked whether other courts have had problems with debtors paying online, David Zimmerman said that he had asked Bankruptcy Clerks within the Tenth Circuit and they reported no significant problems in their experience.

Overall, the Committee members found this feature would be beneficial to debtors.

**The Committee unanimously supported recommending to the Judges that the court accept payments via Pay.gov. They further recommended that the court should only allow payments by debit cards and ACH but not by credit cards or PayPal.**

*C. Proposed Amendments to Local Rule 9011.4 to Make Permanent the Provisions of Standing Order 20-2*

During the last meeting, the Committee unanimously recommended that Standing Order 20-2 (which relaxed rules that formerly required holographic signatures) be converted to a permanent Local Bankruptcy Rule effective in March 2022. After David Zimmerman proposed an amended version of Rule 9011.4 that incorporated the provisions of S.O. 20-2, Jill Michaux shared comments. The Judges considered those and are revising the draft text before publication.

The Committee was also reminded that the District Court eliminated the need to retain hard copies of electronically filed documents when it recently abrogated D. Kan. Rule 5.4.7.

*D. Proposed LBR 3002.2 Government Deadline to File Proof of Claim*

In June, the Committee agreed that there is support in principle for a rule that would extend the government deadline to file a proof of claim after a case converts from chapter 7 to chapter 13. Jill Michaux and January Bailey coordinated with Judge Berger and refined the draft rule. The Judges approved the draft rule with minor adjustments for publication. Judge Berger explained that this was intended to fill a gap in the national rules.

## **II. New Business**

*A. Mortgage Modification Mediation Program: Nancy Skinner*

Nancy Skinner proposed that debtors and mortgage creditors would benefit from a uniform program to facilitate and expedite mortgage modifications. Mortgage modification mediation programs have been implemented in other districts around the country to help facilitate communication and exchange of information. One firm in Florida is willing to do a demonstration to the Committee by Zoom. Similar programs have been utilized in some districts to address student loan issues, as well. Judge Berger suggested that the Committee begin by looking at the rules that adopted both types of mediation programs in other districts. Committee

members mentioned that Southern District of New York and the Middle District of Florida have resources posted on their websites about their programs.

**Nancy Skinner will lead a subcommittee to gather information and work on this issue. January Bailey and Robin Randolph will help. Jill Michaux will share her resources.**

Judge Berger requested that they provide him a preview of their findings and then report to the Committee.

*B. Proposed Changes to LBR 3002.1.1(d) and LBR 4070.1(b): Jill Michaux*

Jill Michaux proposed rule changes (in red) to LBR 3002.1.1(d) and LBR 4070.1(b).

**Rule 3002.1.1(d) Mortgage Creditor’s Duties.**

(4) If the case is a Chapter 12 or 13 case where the secured consumer debt is not modified or paid through the plan, and the Mortgage Creditor believes the debtor is in default, the Mortgage Creditor shall send a letter **and email to the first email address for debtor's attorney in the CMECF docket text**, alleging such default to the debtor and debtor's attorney not less than 14 days before taking any steps to modify the automatic stay.

**Rule 4070.1(b) Proof of Insurance.**

(b) . . . Written demand by the creditor for proof of insurance must be served on the debtor by first-class mail and on debtor’s attorney by first-class mail **and email to the first email address for debtor's attorney in the CMECF docket text**, or ECF notification. . . .

In Jill Michaux’s experience, mail delivery is slower because of recent changes to the US Postal Service’s delivery standards. She is no longer receiving mail in time to respond to the three-day deadline in LBR 4070.1 especially a mailed notice comes from the Wichita area. She wants email notification so debtors’ attorneys can act quickly and satisfy the creditor. From the creditor’s perspective, Kevin Grauberger agreed that delayed mail delivery is a problem, but he was concerned that extending time to respond is not helpful because it would leave creditors unprotected if insurance has lapsed. Getting these issues resolved quickly without the need for a motion for relief from stay would be beneficial. It was observed that notifying debtors’ attorneys through a CM/ECF-generated Notice of Electronic filing (NEF) is not currently a workable solution because under LBR 5005.1, Appx. 1-01, ¶ II.C unrepresented creditors with limited filing privileges cannot file the written demand letter electronically. While considering whether to expand filing privileges under LBR 5005.1, some Committee members said they would rather amend the rules to require creditors to email the demand letter to the debtor’s attorney rather than to expand Rule 5005.1 to allow creditors to electronically file demand letters. Kevin Grauberger

suggested that creditors should be allowed to send the demand letter by email or to file it by CM/ECF (if represented) because service would be sent electronically in both instances.

January Bailey suggested rewording the language slightly to say “and on debtor’s attorney by both first class mail and by email . . .” and eliminating “or ECF notification.”

There was a discussion about how to describe the primary email address of the debtor’s attorney. Jill Michaux explained that some attorneys have multiple email addresses associated with their accounts and she wanted to be sure that the demand letter would be sent to an email address that the debtors’ attorneys would monitor. Other Committee members wanted to be sure that creditors could clearly identify which email was the primary email address. Another question was raised about how whether the three-day deadline in LBR 4070.1 is counted from the date the notice was sent or the date it was delivered. January Bailey suggested changing the deadline to make it seven days from the date the notice is sent, suggesting that would be consistent with the general use of seven-day multiples in noticing rules. Kevin Grauberger expressed some concern about extending the response time beyond three days because it leaves creditors unprotected for a longer time if the debtor is uninsured. The deadline is not intended to give debtors time to acquire insurance, it is to give time to provide proof of existing insurance. Judge Berger said three days feels short and he is not averse to five business days as a deadline.

**Jill Michaux and Kevin Grauberger will work together to refine the language of both proposed amendments and will circulate them for Committee review.**

*C. Federal Bankruptcy Rule and Form Changes Effective December 1, 2021*

David Zimmerman provided a brief summary of the upcoming changes to the federal rules.

*FRBP 2005(c)*: Makes a technical update acknowledging a change to provisions governing bail.

*FRBP 3007(a)(2)(A)(ii)*: Clarifies that only depository institutions insured under the Federal Deposit Insurance Act must be served an objection to claim using the special service requirements of Rule 7004(h). Credit unions, which are insured by the National Credit Union Administration, may be served a claim objection by first-class mail sent to the person designated for receipt of notice on the proof of claim.

*FRBP 7007.1*: Updates the corporate ownership disclosure requirements for non-governmental corporations who are parties to adversary proceedings or seek to intervene.

*FRBP 9036*: The court and others may send notice of documents electronically to anyone who consents to receive notice electronically.

If the recipient is registered for electronic bankruptcy noticing service (eBN or DeBN) then the court can send notices to the registered electronic address through the Bankruptcy Noticing Center (BNC). If the recipient is a high-volume paper recipient (i.e., receives more than 100 paper notices in a calendar month) the recipient will be required to register for

electronic noticing (using the eBN program). The Administrative Office of US Courts (AO) will send a “threshold notice” and instructions to the recipient if the 100 notice threshold is met. The AO will also set a deadline to register. If the recipient does not timely register for eBN then the AO can set up an electronic noticing address for the recipient and the court can send notices to that electronic noticing address, *unless* the recipient designated a noticing address under 11 U.S.C. § 342(e) or (f). Parties cannot send notices through the BNC.

The rule explicitly states that it is the recipient’s responsibility to keep its electronic address current.

Rule 9036 does not relax the special service requirements of Rule 7004.

*Official Form 122B*: The initial instructions were modified. Previously, the form instructed debtors to file a statement of current monthly income if they are individuals filing under Chapter 11. The revised form added “(other than Subchapter V)” because there is no need for an individual debtor in a subchapter V case to file a statement of current monthly income.

#### *D. USAO on the Creditor Matrix*

Chris Allman and Kathryn Sheedy asked whether the US Attorney’s Office needs to be on the general matrix in every case or whether notice to the US Attorney’s Office and the pertinent agency could be limited to cases in which an objection or motion or adversary case actually involves the agency. Kathryn Sheedy explained that the US Attorney’s Office receives an excessive number of notices under LBR 2002.2, and they do not typically do anything with them until the case is referred by the pertinent agency to the US Attorney. They wondered if it could save debtors money on unnecessary noticing by amending the local rule. Jill Michaux explained that years ago, when documents were filed in paper, debtors filed the original and five copies of the schedules and the US Attorney got one of those copies, but she would love to eliminate the notice requirement. It was noted that Rule 2002(j)(4) requires notice to the US Attorney and the relevant federal agency if papers in the case disclose a debt to the United States other than for taxes. There was local support to reduce the noticing requirement but, recognizing that the national rules govern the issue, it was suggested that the federal government’s representatives on the national rules committee might request a national rule change.

#### *E. How to Attract Attorneys to Bankruptcy Practice*

There is concern that bankruptcy attorneys are retiring or leaving bankruptcy practice and relatively few new practitioners seem to be replacing them. In the short term, this means more work for established attorneys, but in the long term this trend may leave people without representation in this complex area of law. Judge Berger shared his personal views that Chapter 13 cases are complex and higher fees can be justified if the market will support them. He observed that all of the Bankruptcy Judges support attorneys being fairly compensated. David Zimmerman explained that the Clerk’s Office is developing long term outreach initiatives to teach students about the Judiciary and invite them to consider a career in the law. Judge Berger

noted that the Judges are also mentoring students through internships, many of whom have become bankruptcy practitioners.

Jill Michaux explained that to help attorneys during the pandemic the Topeka Area Bankruptcy Council opened their CLE programs to everyone in the state without charge. January Bailey suggested offering an introduction to bankruptcy practice CLE, perhaps in June when attorneys are desperate for CLE hours. Patricia Hamilton suggested using the CARE financial literacy program to introduce high school and college students to bankruptcy practice. January Bailey reported that Wichita is setting up a new CARE program chapter.

*F. Other Topics*

January Bailey asked whether the *Kinney* case required the local form plan to be amended. Judge Berger said the court is considering the issue.

The program ended at 5:05 pm.