

**Minutes of the Bankruptcy Bench Bar Committee  
May 31, 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  
Carl Davis, Chapter 12 Trustee and Chapter 13 Trustee  
January Bailey  
Jill Michaux  
Nancy Skinner  
Kevin Grauberger  
Kathryn E. Sheedy

Court Staff Present: David Zimmerman, Clerk of Court  
Joyce Ridgeway, Chief Deputy Clerk  
Doug Burnette, IT Specialist

The meeting commenced at 10:00 am.

**I. Old Business**

*A. Minutes.*

The Committee approved the minutes of the October 18, 2021 meeting. The minutes will be 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: An Update from the Clerk's Office*

This topic was carried forward from the Fall 2021 meeting, when January Bailey asked whether the court should begin to accept credit cards and ACH (automated clearinghouse) payments for Chapter 7 fee installment payments. David Zimmerman reported that the Judges authorized the Clerk's Office to implement this payment program, and the Clerk's Office is making progress toward implementing it. Plans include setting up the public computer terminals in each Clerk's Office to make payments through Pay.gov so it will be easy for visitors to pay electronically using debit cards and ACH. Credit cards and PayPal payments will not be accepted. Pay.gov will prompt people to enter the case number, debtor's name, and a brief description of the fee being paid.

*C. Mortgage Modification Mediation Program*

This topic was carried forward from the Fall 2021 meeting when the Committee decided that Nancy Skinner will lead a subcommittee to gather information and work on this issue. Nancy Skinner reported that the group had met and reached out to creditor attorneys to obtain their input about establishing a mortgage modification mediation program, but only a few had

responded. Robin Randolph resigned from the Committee because her practice changed to another area of law.

**Nancy Skinner and January Bailey will continue to work on this issue with mortgage creditor attorneys who are willing to participate.**

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

These topics were carried forward from the Fall 2021 meeting when the Committee decided that Jill Michaux and Kevin Grauberger would work together to refine the language of some proposed amendments to LBR 3002.1.1(d) (Mortgage Creditors' Duties) and LBR 4070.1(b) (Proof of Insurance). The changes contemplate notice being sent electronically to debtors' attorneys because mail service has recently slowed. Kevin Grauberger and Jill Michaux reported that they have discussed some changes to the draft amendments.

**Kevin Grauberger and Jill Michaux plan to have a draft rule ready to present to the Committee by the Fall meeting.**

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

This topic was discussed during the Fall 2021 meeting. David Zimmerman reported that recent efforts of the Bankruptcy Court include hosting a Law Day program, presenting the Judge Julie A. Robinson Award, mentoring interns in Bankruptcy Judges' chambers and in the Clerk's Office, and preparing courthouse tours and programs to teach students about career options in the federal Judiciary. Judge Berger mentioned that five or six Bankruptcy Court interns later became bankruptcy practitioners. Jill Michaux reported that the Topeka Area Bankruptcy Council made its bankruptcy CLE programs available for free via Zoom to Kansas attorneys and Missouri attorneys who practice in Kansas. She also adds attorney names to the bankruptcy listserv to promote interest in bankruptcy. There was also a discussion about the availability of bankruptcy courses offered by Kansas law schools.

*F. CourtSpeak: An Update*

David Zimmerman reported that the Court plans to implement a program that can post recordings of selected court hearings to PACER, but plans have been delayed because the court's IT staff have had to focus on CM/ECF upgrades and a large number of behind-the-scenes security-related upgrades. He also explained that the Clerk's Office is looking at a different product that may be better than CourtSpeak.

## **II. New Business**

*A. Proposed Amendment to LBR 1009.1*

January Bailey proposed adding subsections (d) and (e) to LBR 1009.1, so the revised rule would 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 to the matrix via the Creditor Maintenance function on CM/ECF.

(e) **Conversion Exception.** The Debtor is not required to file the Notice of Amendment of Schedules D, E/F, G or H (Addition of Creditor(s)) form when the Amended Schedule is filed concurrently with the conversion to another chapter and are included in the Notice of Bankruptcy Case issued by the clerk's office.

The purpose of subsection (e) is to eliminate the need for a debtor to give notice of amended schedules that add creditors when the debtor converts from one chapter to another because notice is provided by the Clerk's Office when it issues a new 341 Notice. This change would apply to conversions to all chapters. David Zimmerman suggested a few minor changes to the language that the Clerk's Office recommended.

Questions arose whether "gap creditors" (new creditors whose claims arise between the petition date and the conversion date) need to be listed in an amended or a supplemental schedule, and whether notice to newly added creditors must be provided when the case is converted. Some Committee members thought that without a local rule change 11 U.S.C. § 348(d) and Fed. R. Bankr. P. 1009 require debtors to amend schedules to add "gap" creditors and then serve the amended schedules on affected parties when a case is converted. On the other hand, one Committee member opined that when a debtor converts a case to a new chapter it is sufficient for a debtor to file a "gap creditor schedule" and update the matrix using the creditor maintenance feature in CM/ECF and pay the corresponding fee—without serving the "gap creditor schedule" or a notice of amended schedule on anyone—because the Clerk's Office provides notice when it issues a new 341 Notice upon conversion.

**Although there was general support for the proposed additions to LBR 1009.1 in principle, the Committee plans to research the issues further. David Zimmerman will circulate the changes proposed by the Clerk's Office to the Committee. The Committee will revisit the subject during the next meeting.**

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

Jill Michaux recommended that some CM/ECF events be modified so the docket text will include a deadline date. This would benefit some attorneys who have software that will pick up dates from the docket text and add them to a calendar. Some events that she recommended as candidates are:

Response to Notice of Final Cure Payment Rule 3002.1  
Notice of Chapter 13 Case Completion  
Chapter 13 Trustee Notice of Plan Approaching Completion (Text Only)  
Clerk Notice of No Financial Management Certificate on File

David Zimmerman explained that some events in CM/ECF do not include a deadline with a date certain.

**Joyce Ridgeway will work directly with Jill Michaux and determine whether some of the CM/ECF events can be amended. This topic will be carried forward to the next meeting.**

*C. Other Topics*

Chapter 13 Form Plan: Judge Berger said he plans to begin reviewing the local Chapter 13 form plan and eventually form a committee to provide input.

Text Orders: Judge Berger encouraged expanding the use of text orders in Kansas City. Judge Berger said he does not intend to change the culture in other divisions, but he invited attorneys to suggest new issues for which text orders could be used in Kansas City. They are efficient and widely used in Missouri, he said. When asked about their use in Topeka, Joyce Ridgeway shared that text orders tend to be rarely used in Topeka because attorneys seem to prefer to submit their own draft orders. She also observed that text orders contain language requiring the moving party to serve a copy of the orders on parties who do not receive Notice of Electronic Filings (NEFs) directly from CM/ECF. A question arose about whether that language requires service of the text order on the matrix. Judge Berger said that the language governing service could be amended if needed. Joyce Ridgeway explained that the Clerk's Office routinely sends a copy of text orders to pro se debtors and affected pro se creditors and service is noted in the BNC's Certificate of Service. January Bailey recommended that the court promote uniformity across all divisions. Joyce Ridgeway said that attorneys anywhere can request any of the available text orders.

**Joyce Ridgeway will circulate a list of the available text orders so all attorneys can be more aware of what is available. This topic will be carried forward to the next meeting, including the question of whether the service language accompanying text orders needs to be modified.** [Editor's Note: A list of available text orders, along with sample language for each order, is attached to these minutes.]

Equitable Tolling and the Tenth Circuit Decision in *Kinney*: Judge Berger observed that the *Kinney* decision from the Tenth Circuit raises some difficult issues. From an academic perspective, he wondered whether equitable tolling could apply based on principles explored in several Supreme Court's decisions [*In re Young*, 535 U.S. 43 (Mar. 4, 2002), *Boechler, P.C. v. Commissioner of Internal Revenue*, 142 S.Ct. 1493 (Apr. 21, 2022), and *Kontrick v. Ryan*, 540 U.S. 443 (Jan. 14, 2004)].

Chapter 13 Trustee Observations: Carl Davis noted that new Local Rule 3002.2 has taken effect but in Wichita there have not yet been any conversions in which that rule has had an effect.

Chapter 12 Trustee Observations: Carl Davis noted that there have not been any Chapter 12 cases filed yet in 2022 in Kansas, likely because crop prices are high. He said by next meeting, he hopes to have a set of local rules ready to propose for Chapter 12 cases. He plans to seek input about those proposed rules from attorneys who handle Chapter 12 cases.

The program ended at 11:30 am.

### **Appendix: List of Text Orders with Sample Language**

#### **Language Governing Service That Is Appended to All Text Orders:**

THE MOVING PARTY IS TO SERVE THIS ORDER ON PARTIES NOT RECEIVING ELECTRONIC NOTICE AND FILE A CERTIFICATE OF SERVICE WITH THE COURT.

(When filing a certificate of service for this order, relate it back to the **epo** category.)

*This Notice of Electronic Filing is the Official ORDER for this entry. No document is attached.*

#### **Order Granting Trustee's Application to Employ Successor Law Firm**

Trustee's application to employ successor law firm to represent Trustee following merger with former firm is granted. So ORDERED by s/Robert D. Berger (related documents [26] Application to Employ.)

#### **Order [Granting/Denying] Debtor(s)' Motion to Borrow**

So ORDERED by s/Robert D. Berger (related documents [28] Motion to Borrow).

#### **Order Denying Chapter 13 Trustee's Motion to Dismiss**

So ORDERED by s/ Dale L. Somers. (related documents [55](#) Motion for Dismissal for Other. Filed on behalf of Trustee.)

**Order to Commence Distribution of Funds, Pre-Confirmation**

The Trustee shall begin distributing funds pursuant to the Chapter 13 Plan, as though it were confirmed. So ORDERED by s/ *Robert D. Berger*.

**Order Denying Trustee's Motion to Compel**

So ORDERED by s/ *Robert D. Berger* (related documents [32] Motion to Compel).

**Order Continuing Hearing**

Reason for Continuance: *[reason]* So ORDERED by s/ *Robert E. Nugent*. (related documents [12](#) *Motion for Relief from Stay. Fee Amount \$181, Filed on behalf of [filer]*) Hearing scheduled 12/20/2018 at 01:30 PM at Wichita Room 150.

**Order Denying Motion to Extend the Automatic Stay**

Following hearing on Debtor(s) motion under §362(c)(3), the motion is DENIED and the temporary stay shall terminate 30 days from the date of the petition. **Debtor/Movant shall serve a copy of this order on all creditors and file a certificate of service with the Court.** So ORDERED by s/ *Robert D. Berger*. (related documents [18](#) *Motion for for Relief from Automatic Stay Filed on behalf of Creditor*)

**Order Granting Motion to Extend the Automatic Stay**

Debtor/Movant has met burden of proof that this case is filed in good faith, stay is continued as to all creditors under §362(c)(3). **Debtor/Movant shall serve a copy of this order on all creditors and file a certificate of service with the Court.** So ORDERED by s/ *Robert E. Nugent*. (related documents [10](#) *Motion to Extend Automatic Stay, in addition to Application for Compensation Attorney, Period: to, Fee: \$300.00, Expenses: \$. Filed on behalf of Attorney.*)

**Order Denying Objection to Claim #**

So ORDERED by s/ *Dale L. Somers* (related documents [7] Objection to Claim).

**Order [Denying/Granting] Objection to Exemptions**

So ORDERED by s/ *Robert D. Berger*. (related documents [23](#) *Objection to Debtor's Claim of Exemptions Amended Filed by Trustee, with Certificate of Service.*)

**Order Denying Motion for Relief from Stay**

So ORDERED by s/ *Robert D. Berger*. (related documents [24](#) *Motion for Relief from Stay. Fee Amount \$181, Filed on behalf of Creditor.*)

**Order Granting Motion for Relief from Stay, In Rem**

no waiver of 14 day appeal time; movant shall account to Trustee for any surplus; and relief order applicable even if case converted, unless otherwise specifically ordered. All other relief requested is denied. So ORDERED by s/*Mitchell L Herren*. (related documents [71] *Motion for Relief From Stay Regarding . . . .*)

**Order [Denying/Granting] Debtor(s)' Motion to Sell**

So ORDERED by s/Dale L. Somers (related documents [65] Motion to Sell).

**Order Denying Debtor(s)' Motion to Suspend/Abate Plan Payments.**

So ORDERED by s/ Mitchell L. Herren. (related documents [6] Motion to Modify Plan Payment (Abating Plan Payments)).

**Order Granting Debtor(s)' Motion to Suspend/Abate Payments.**

Trustee may submit Order of Dismissal, without further notice or hearing, if Debtor(s) fail to resume timely plan payments, if Debtor(s) filed instant Motion to Suspend/Abate after Trustee file a Motion to Dismiss for default, and failure to resume may result in dismissal of the case, otherwise, after further hearing. So ORDERED by s/ Mitchell L. Herren. (related documents [6] Motion to Modify Plan Payment (Abating Plan Payments)).

**Order Terminating Order to Appear and Show Cause (Compliance)**

Debtor(s) and Counsel, if applicable, are excused from further appearance on the Order to Show Cause. So ORDERED by s/ *Robert E. Nugent*. (related documents [18](#) *Order to Show Cause for Failure to Submit Declaration Re: Electronic Filing Signed on 1/17/2018 Show Cause hearing to be held on 2/8/2018 at 10:30 AM at Wichita Room 150.*)

**Order Terminating Order to Appear and Show Cause (No Compliance)**

At the request of the Trustee, Debtor(s) and Counsel, if applicable, are excused from further appearance on this Order to Show Cause. Termination of show cause is not a finding that Debtor has complied with Order to Show Cause. So ORDERED by s/ Dale L. Somers. (related documents [40] Order to Show Cause)