

United States Bankruptcy Court

Eastern District of Washington

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DATE: June 19, 1998

FROM: Ted McGregor 

TO: Advisory Committee; Judge Rossmeissl, Judge Klobucher, Judge Williams, Jake Miller, Ford Elsaesser, Dan Brunner, Ian Ledlin, Nancy Isserlis, Bill Beatty, Bruce Boyden, John Powers, Jim Hurley, Rick Hayden

SUBJECT:: Report on June 4, 1998 Meeting of Advisory Committee

A meeting of the Standing Advisory Committee for the U.S. Bankruptcy Court for the Eastern District of Washington was held at Sun Mountain on Thursday, June 4, 1998. In attendance were Chief Judge Rossmeissl, Judge Williams, Ted McGregor, Bill Hames, Jake Miller, Dan Brunner, Ian Ledlin, Rolf Tangvold, John Powers, Jim Hurley, Rick Hayden, Joe Harkrader, and Sandee Gabriel.

Judge Rossmeissl reported that the emphasis recently placed on the Chapter 13 process, particularly regarding confirmation of plans, appeared to result in success, and he complimented all of the parties who have played a role in this process. He also noted that some proposed changes to the Bankruptcy Code might have the effect of adding work to the court, most likely in the consumer area.

Judge Williams reported that she is very busy and that her staff is equally busy, once again particularly in the Chapter 13 area.

John Powers, who recently attended a meeting of the ABI reported that that group was not supportive of many of the changes to the Bankruptcy Code being considered by Congress.

Dan Brunner reported that the Chapter 13 office had recently added Jennifer Aspaas, an attorney, to their staff. Jennifer was most recently a law clerk for both Judge Klobucher and Judge Williams. Dan also reported that the emphasis in getting more plans confirmed and the cases dealt with more expeditiously appeared to be working. Dan also introduced information concerning Electronic Access to the trustee's records and how it works, and also demonstrated the trustee developed automated forms program.

Ted McGregor reported that filings continue to increase, although the rate of increase had declined. Filings for 1998 are projected to reach 8000.

He also reported that retrieval of images of court documents over the INTERNET would be a reality by mid-year. Under the present plan, no charge would be imposed for this service, however, he noted that a small charge might be imposed in 1999.

The first item on the agenda was a change to LBR 2083-1(p) concerning Income Directives. It was noted that should the rule change, certain changes should also be made to the form plan and Plan Payment Declaration. The Committee voted unanimously that changes to sub-section (p) of LBR-1 2083 as proposed by Dan Brunner be adopted by the court. Ted indicated that he would take the necessary steps required to publish the changes for comment. It was also agreed by the committee, that changes to the form required as a result of a rule change was not equal to a change in the rule, and thus the notice requirements of rule changes would not be applicable. Dan Brunner and Ian Ledlin were tasked to suggest changes to the plan and associated documents.

Dan discussed the case of *In re Anderson* 215 B.R. 792 (BAP. 10th Cir. 1998), which was a case that found that if a confirmed plan included a provision that discharged a student loan based on hardship, that the plan controlled and a determination by an adversary proceeding would not be required. The discussion following resulted in a general thought that this would not be controlling in this district, and that an opposite philosophy was developed and adopted by the court requiring that such actions would need to be the subject of an Adversary Proceeding or other independent action, similar to the area of lien avoidance. No action was recommended.

Ian discussed the *In Re Bruzsee* case, 214 B.R. 444 (Bkrcty E.D.N.Y. 1997) which involved sua sponte involvement by a bankruptcy court in reaffirmation agreements where the debtor was represented by an attorney. The general sense of the committee was that this issue was presently before Congress and likely might be addressed in subsequent legislation. No action was recommended.

The discussion then was directed at various general fee issues.

The case of *InRe Biggar* 110 F.3d 685 (9th Cir 1997) was discussed. That case found that fees earned pre-petition, in a Chapter 7, but to be paid post-petition was dischargeable. No one on the committee indicated that they were surprised by the decision, and that it was a logical result of applying the statute.

The discussion then turned to whether or not fees earned during the course of a 13 are discharged by the Chapter 13 discharge, to which no agreement was solicited or offered. The issue is the need by the attorney to disclose fees received directly from a debtor both during the pendency of the case, and after it was dismissed. The duty to disclose set forth in 11 USC 329, and reinforced by LBR 9011-1(a), was discussed. It appeared to be the consensus of the committee that this was an area in which no wide range abuse was suspected, and that the matter was best dealt with on a case by case basis as appropriate.

Judge Rossmeyssl discussed the sometimes significant range in fees, particularly in Chapter 13 cases, for seemingly similar work. He reported ranges such as \$1200 to \$2800. The question then arose as to whether fees under \$1,000 in Chapter 13 cases should be reviewed by the court in any fashion unless brought to its attention by a party in interest. This in light of I.B.R. 2016-1(d) which largely excepts any detailing of fees under \$1,000, but does require notice to the debtor. The discussion disclosed that some attorneys will choose to do Chapter 13s for a flat fee of \$1,000 or less, even though in some cases, time records would support higher fees. There was also a thought that the presumption should be that attorneys will not overreach in this area, and absent some indication to the contrary, the presumption should stand. Jake reported that it was his observation that the fees generated in the Eastern District are generally lower than other districts he has visited. The general consensus was that no real problem existed in this area, and that absent anything further, no action was required.

John Powers raised the issue of attorneys whether fees requested from out of district counsel, whose fees might be higher than those generally found in the district, should or would be approved. Judge Rossmeyssl indicated that in at least one case he approved the larger fee, but based on a showing that the out of district counsel demonstrated special skill that justified the higher fee. The consensus seemed to be that this was an area to be dealt with on a case by case basis.

The last area addressed by the committee was whether the court favored or disfavored "payment first" provisions in Chapter 13 cases. The judges reported that the issue was not much of a problem and largely dealt with case to case, as appropriate. It was thought, however, that the plan provisions ought to be clearer, particularly so that creditors would understand the delay in payments to them that might occur. Dan Brunner and Ian Ledlin were tasked to review the Chapter 13 plan form in that regard. In a related matter, Dan Brunner and Gary Farrell, were also tasked to suggest changes to the form fee application form, LF 2016, to make it clearer and more "user" friendly.

Attached to this report is a roster of the membership of the committee; included in this roster are the terms of office of the rotating members. It should be noted that Tony Grabicki's term expired in June of 1998 and that he was replaced by Bruce Boyden, whose term will be for two years.

The schedule of meetings was also changed from every 3 months, to every 4 months, or three times a year, in June, October and February. The meetings will all be in person. The June meetings will coincide with the seminar of the Bankruptcy Bar Association at Sun Mountain, the October meetings will be held in Spokane and the February meetings in Yakima. Exact times and locations for the meetings will be announced once determined.

The deadlines for submission of written materials and agenda topics are as follows:

August 21, 1998 - Receipt by Clerk of written drafts and supporting materials

September 2, 1998 - Clerk of Court sends each member written drafts and supporting

materials

- October 2, 1998 - Receipt by Clerk of written comments to written drafts, other agenda items, and supporting material
- October 9, 1998 - Clerk sends final agenda and any additional written materials to all members
- October 16, 1998 - Meeting, exact date and location to be determined

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