

United States Bankruptcy Court

Eastern District of Washington

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DATE: October 28, 1998

FROM: Ted McGregor

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

SUBJECT: Notes from October 16, committee meeting

The Standing Advisory Committee of the United States Bankruptcy Court for the Eastern District of Washington met in Spokane on October 16, 1998. Present were Judges Rossmeissl, Williams and Klobucher, Nancy Isserlis, Julie Hirsch, Tap Menard, Bev Benka, Ted McGregor, Jake Miller, Gary Farrell, Dan Brunner, Joe Harkrader, Ian Ledlin, Bill Beatty, Bruce Boyden, Jim Hurley, and James Murray.

Welcoming remarks were made by Chief Judge Rossmeissl and Nancy Isserlis, President of the Federal Bankruptcy Bar Association. Nancy Isserlis commented that she has recently come to appreciate the congeniality with which law is practiced in the Eastern District and the level of law that is practiced. Judge Williams added her support and agreement with that observation.

Judge Rossmeissl indicated that there were no serious problems of which he was aware. He also introduced James Murray, the District Librarian. James shared that the library was a very valuable and complete resource, and that although its first client is the judiciary, its resources are certainly available to those members of the bar authorized to practice before the federal court.

Judge Klobucher noted that he will be sitting in Spokane approximately ½ time, likely was not going to California to hear cases, and that he would be available to serve as a settlement judge if asked.

Nancy Isserlis reported that she was unaware of any major issues, and indicated that the planning for the Sun Mountain retreat was underway. Both the outgoing president and the incoming president, Ford Elsaesser, of the ABI are tentatively scheduled to speak. She did indicate that the ABI Website @www.abiworld.org is current and quite helpful.

Judge Rossmeissl reported that the initial draft of the report on the study of the 9th circuit restructuring was also available on the Internet, which proposed keeping the 9th circuit intact, but dividing it into three divisions.

Dan Brunner reported that the Summit Process, a copy of the report of which is attached to this report, was proceeding successfully. He also indicated that the dial up access to information contained in the Chapter 13's office data base was functioning.

Ted McGregor introduced a proposed change to LBR 5001-2 and stated that he was proposing to have the Clerk's Office open during the lunch hour, starting in 1999. He also discussed a proposal by Rick Hayden of installing kiosks to accommodate after-hour filing. He indicated that he would research security aspects as well as placement possibilities. A change to LBR 5005-1 might be required.

He also briefed the committee on a variety of automation initiatives, such as: initiation of a Website @www.waeb.uscourts.gov, through which a variety of court information is available, that includes RACER, which allows users to view images over the Internet of documents in cases filed after January 1, 1997; use of master card and visa for payments of court fees to be effective November 1, 1998; and a court developed digital court recording system, which would allow users to access audio recordings directly over the Internet, that is to be introduced on a pilot basis in Spokane commencing November 1, 1998. He also advised that the Judicial Conference of the United States did impose a \$.07 cents per page download charge to judiciary provided Internet access for case information, but that there would be no charge for general court information. This fee was not yet being imposed locally, however, once the judiciary's Internet access becomes available, a system called PUBNET, the fee likely would be imposed.

He also asked for feedback on the idea of developing a users group comprised of court personnel, attorneys, attorney office automation staff and other regular users such as trustees and major creditors. He also discussed electronic filing initiatives that are being tested in other courts, and stated that our court is examining electronic filing, and indicated that it was the aim to move in this direction as quickly as possible. He indicated that the court was trying to take as much advantage as possible of automation as it was able. Judge Rossmeissl indicated that it was his observation that our court was in the forefront in this area.

In response to an inquiry as to why the claims docket information had been changed to no longer contain a breakdown as to the dollar amount of claims in each classification, he responded that this was due to the manner in which the software employed by the court was written, along with a change to the proof of claim form. However, the docket will indicate the total amount of the claim, and the classification or classifications in which the claim was filed. Of, course, in cases filed after January 1, 1997, images of the claims and any attachments are viewable over RACER.

Ted McGregor proposed a change to the local Request for Approval of Reaffirmation Agreement form (LF 4008) to change the disclosure language contained on the form to parrot that which is found in 11 U.S.C. 524. After brief discussion, the proposal was tabled.

Gary Farrell spoke about proposed changes to the local Application for Compensation and Reimbursement of Expenses form (LF 2016). He indicated that the basic philosophy in addressing this question was that the form should address all fees paid in a case and be limited to those arising from 11 U.S.C. 330, as opposed to including 503(e) issues.

One of the issues discussed during his presentation was whether or not pre petition fees needed to be itemized in support of a post petition application, especially when the total fees, those paid pre petition and requested post petition exceed \$1,000.

Judge Rossmeissl suggested that the issues raised were excellent issues, but that they could not be adequately addressed at the meeting and suggested that a sub-committee be formed to review the entire issue of fees, including Local Rules 2016-1, 2083-1(d)(3) and the local form. Also included in their charge would be issues concerning fees in Chapter 13 cases that are disclosed in the plan but only allowed by the confirmation of the plan, and funds held in trust accounts of attorneys who represent debtors and debtor's in possession. Judge Williams observed that possibly two forms would be in order, one for Chapter 13 cases, and one for the rest.

The committee appointed a sub-committee composed of Judge Rossmeissl, Ian Ledlin, Gary Farrell and Bruce Boyden to review this very important area and report and recommend to the committee at its next meeting.

Ian Ledlin and Dan Brunner discussed changes to the form Chapter 13 Plan and the Plan Payment Declaration. Certain of the changes were occasioned by a change in LBR 2083-1(p) concerning income directives. Following discussion on the proposed changes, the committee asked that Ian and Dan incorporate points made in the discussion into a re-draft. The re-draft will be circulation for additional comments, then sent on to the judges for approval or disapproval. It was hoped that this could be accomplished as quickly as possible since the form presently does not comport with the changes to LBR 2083-1(p).

Nancy Isserlis next spoke regarding pro bono and pro se issues, particularly in light of the recent change to the local rules allowing participation before the Bankruptcy Court of rule 9 attorneys. Nancy explained her involvement in a pro bono initiative in the three principal areas of the Eastern District; Spokane, Yakima and the TriCities. Judge Klobucher indicated that from time to time being able to refer a party to a legal clinic would be helpful, particularly in some dischargeability matters. The issue was raised as to what kind of involvement by the court or by attorneys was appropriate. Although no specific action was suggested by the committee, Nancy's work in this area likely will be a report item at the next meeting of the committee.

The area of the objection to claims process was considered by the group. The group reviewed a letter sent to the committee by Brad Mellotte which identified various concerns. Judge Rossmeissl again indicated that this was an important and quite confusing area, and suggested that a sub-committee be appointed to review Local Rule 3007-1 and related matters, and suggest changes at the next meeting of the committee. The members of this sub-committee selected by the committee were Judge Rossmeissl, Brad Mellotte, Denny Colvin, Van Culpepper, Bill Beatty, and Dan Brunner. Ted McGregor will contact the non-committee members and ask them if they would agree to participate.

The committee then discussed the date for the next meeting of the committee and selected March 5, 1998 in Yakima. Exact times and location will be announced as soon as possible.

In accordance with prior agreements, the timetable for submitting written materials and agenda topics for the March 5, 1999 meeting is as follows:

- January 8, 1999 - Receipt by Clerk of written drafts and supporting documents, any additional agenda items;
- January 22, 1999 - Clerk sends each member copies of written materials;

- February 12, 1999 - Receipt by Clerk of written comments to written drafts and any additional agenda items and supporting materials;
- February 26, 1999 - Clerk sends final agenda and any remaining written items to members;
- March 5, 1999 - Meeting in Yakima.

Reimbursement of per diem will be available for members traveling to Yakima upon application. Application forms and instructions will be included in the meeting materials.

The meeting was adjourned at 4:00 p.m. Judge Rossmeissl thanked everyone and expressed his appreciation for the time and effort spent by the participants; he also indicated that he felt the process was very helpful to the court.