

United States Bankruptcy Court  
Eastern District of Washington

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**DATE:** June 25, 1999

**FROM:** Ted McGregor

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

**SUBJECT: REPORT OF JUNE 1999 MEETING OF THE STANDING ADVISORY COMMITTEE**

The June meeting of the court's Standing Advisory Committee was held on Thursday, June 10, 1999 at Sun Mountain. Committee members in attendance were Judges Rossmeissl and Williams, Dan Brunner, Gary Farrell, Rick Hayden, Jim Hurley, Ted McGregor, Jake Miller, Ian Ledlin, John Powers, and Rolf Tangvald. Also joining the meeting were Bev Benka and Joe Harkrader. Judge Rossmeissl opened the meeting at 1:00 p.m. and welcomed the attendees.

Judge Rossmeissl reported that the Yakima chambers are very busy but that generally things are progressing smoothly. He noted that the Chapter 13 filings are up and that he was assigned several large Chapter 11 cases that are requiring additional judicial time. Judge Rossmeissl also announced that he is stepping down as Chief Judge, and that Judge Williams would be his replacement. Although there was some discussion as to when the baton of leadership would be passed, Judge Williams' appointment as Chief Judge became effective on June 15, 1999.

Judge Williams reported that her chambers is perhaps less busy; that chapter 11s, 12s and 13s are down. She reported that hearing time is available and that no delays due to unavailability of judicial time ought to be experienced.

Some discussion ensued as to why Yakima is busier than Spokane; it was noted that perhaps the economy of the Yakima area is not as robust as that in Spokane. It was observed that more of the Chapter 13 cases are business related than in Yakima.

Nancy Isserlis, current president of the Bankruptcy Bar Association was not in attendance due to her need to attend a meeting with State Superior Court judges, sent her greetings and good wishes. Gary Farrell, incoming chairperson of the Association, reported that the leadership

positions of the Association are being formalized and that they anticipated sponsoring a workshop in the fall of 1999. He reported that the Association is in a financial position to allow for a training session that would be financially "hard to pass up." Ian Ledlin reported that the Association is considering a memorial for Judge Ianel. It was also suggested that the Association may wish to assist in Alternate Dispute Resolution efforts.

Ted McGregor reported on the status of the Office of the Clerk. He indicated that filings are down slightly, and noted that nationally they are down about 6%. He reported that the court continues to push automation initiatives, reporting that access to the images over the internet via the court's website at [www.waeb.uscourts.gov](http://www.waeb.uscourts.gov) has been recording an average of 300 "hits" per day. He indicated that Y2K issues and getting a new case management system in place will be the emphasis for the remainder of 1999, but that electronic filing will be addressed in early 2000. The digital court recording pilot (EARS) is still being developed but was delayed by the resignation of the programmer that was developing the project. It is anticipated that some electronic filing may be addressed in 1999, but will be limited to types of documents as opposed to general filing of all items. Ted also explained that the standards set by the court for processing time for various items are being met regularly.

He also noted that various changes to the Federal Rules of Bankruptcy Procedure were taking effect on December 1, 1999. Copies of the changes were provided to the members.

Dan Brunner reported that his office is integrating more and more automation all of the time and is seeking to become paperless. The confirmation of plans is going along very well. He reported that there are very few "really old" cases that are left unconfirmed. One area of emphasis is to encourage debtor's attorneys to become more pro-active in the management of their cases. Judge Williams noted that the way the process now works, generally two hearings are required for cases where objections to plans are filed. Both she and Judge Rossmeissl noted that although significant judicial time was available and used in dealing with the backlog, the court may not have the luxury of such an availability of judicial time in the future.

Ian Ledlin noted that if more issues were able to be resolved at the meeting of creditors, fewer objections to confirmation might need to be filed. Dan Brunner did note that to get more out of the meeting of creditors would require more time spent on these meetings by the personnel of the Chapter 13 office. Judge Rossmeissl observed that better communication between attorneys and the Chapter 13 office would go a long way in resolving issues.

Dan Brunner indicated that his office is trying to use the threat of a hearing "stick" less and less by improving communications. Waiting for a hearing date to address issues is not a very efficient or helpful technique. Gary Farrell opined that using the hearing to learn about the case and its issues is not good form. A motion to dismiss for some failure to deal with concerns, perhaps ought to result in a dismissal, and not just an opportunity for additional delay.

Jim Hurley suggested that perhaps a Chapter 13 seminar, possibly sponsored by the association, would be helpful in allowing for a better understanding of the process.

Rolf Tangvald related that the IRS is talking about centralizing their operation to Seattle or even Denver, and to reduce if not eliminate a local presence in Spokane. He felt that nothing would be done about this in 1999. It was observed that the current local personnel of IRS are very efficient and that except for them, more hearings, both in court and telephonic, might be required.

Jake Miller reported that there was not much new in the office of the U.S. Trustee, however, that would change if the proposed bankruptcy legislation were to be enacted. It was noted that one of the proposals being considered is to have the debtor's file copies of prior income tax records with the U.S. Trustee. This would result in a significant new expense. Rolf noted that unless a tax return is actually filed with the court, it is considered "confidential."

Jim Hurley reported on the ADR Sub-committee. He reported that the sub-committee was of the opinion that ADR has a place in the bankruptcy system, and that for it to be effective the personnel involved would need to be well trained, that it should be voluntary and not mandatory, and be a high quality program. He also noted that the Association likely could be called upon for assistance.

It was agreed by the committee to expand the sub-committee and that they would be tasked with preparing a draft local rule for consideration at the next meeting of the committee.

Next item of discussion was proposed changes to LBR 3007-1 Claims - Objections. This rule was considered by the committee at its prior meeting and the sub-committee on claims was asked to prepare changes to the rule. The principal concern was the method of service required. The sub-committee reported that the case of *In re Levoy* 182 B.R. 827 (9<sup>th</sup> cir BAP, May 17, 1995) seemed to be on point and that the service in accordance with FRBP 7004 needed to be followed. At the meeting, Rolf expressed his position that FRBP 3007 required that the notice of the objection of a proof of claim actually needed to include hearing scheduling information. He reported that some research done by Bill Beatty disclosed that in all of the districts included in his research, a hearing was set and announced on the notice of objection. After some discussion, a vote was called for by Judge Rossmeissl and the committee voted to send the proposed rule as drafted on to the judges for their consideration and adoption.

The proposed draft of changes to LBR 3012-1 were introduced and the committee approved the draft and voted to send it on to the judges.

Gary Farrell reported on the work of the Fees Sub-committee and the process used in developing a change to the 2016 series of local forms. Ian then explained the modification to the changes. After various clarification questions and discussion, the committee voted to approve the changes to the forms and send them to the judges for their consideration.

Dan Brunner introduced and explained proposed changes to the 2083 local form series. The changes were some that had been essentially agreed to by the committee at a prior meeting, and the committee voted to approve the changes and send them on to the judges for their consideration.

Ted McGregor introduced a draft of a local rule dealing with motions to seal (LBR 9018-1). After some discussion the committee voted to approve the rule and send it on to the judges for their consideration.

The committee next discussed the question of appointing a standing sub-committee on Chapter 13. An ad hoc committee has been working for some time on confirmation issues. That process was viewed as quite successful and what was seen as a backlog in unconfirmed cases was eradicated for the most part. It was felt that since Chapter 13 involves a significant portion of the cases filed that a standing sub-committee would be helpful as a source of information and opportunity to enhance communications among the various entities involved in the chapter 13 process. The committee voted to establish such a committee and suggestions for membership were invited. It was felt that Dan Brunner ought to chair or co-chair the committee, and that the committee should be inclusive of the various interest groups, and not necessarily be limited to attorneys. Once a list of nominees is prepared, it will be submitted to the judges for their approval.

Two positions on the standing committee were due to expire in June of 1999, those being the Debtor-Creditor position, occupied by Ian Ledlin and the Creditor-Consumer position occupied by Rick Hayden. The call for nominations was announced at the meeting of the Association and any nominations received will be submitted to the judges for their consideration.

The next meeting of the committee was set for October 8, 1999, however, on checking her calendar, Judge Williams will be at an out of town meeting on that date. Therefore, the date selected for the next meeting is **October 22, 1999** to be held in **Spokane**. Exact times and place to be announced later.

#### Summary of Assignments

July 16, 1999	Final draft of LBR 3007-1, 3012-1 and 9018-1 to judges for consideration	Ted McGregor
July 16, 1999	Final draft of LF 2016 series and LF 2083 series to judges for consideration	Ted McGregor
August 6, 1999	Nominations for ADR sub-committee to Ted McGregor	Jim Hurley
October 1, 1999	Draft of Local ADR Rule	Jim Hurley
August 6, 1999	Nominations for Chapter 13 Standing sub-committee to Ted McGregor	Dan Brunner