

United States Bankruptcy Court
Eastern District of Washington

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FROM: Ted McGregor *TAM*

TO: Advisory Committee Meeting Participants; Judge Williams, Bill Hames, Judge Rossmeissl, Judge Klobucher, Jake Miller, Ford Elsaesser, Dan Brunner, Rolf Tangvald, Greg Beeler, Ian Ledlin, Kevin O'Rourke, Jennifer Aspaas, Lisa McBride, Patrick Morrissey

SUBJECT: Bankruptcy Court Advisory Committee Meeting - October 24, 2003

The Bankruptcy Court Advisory Committee met on October 24, in Spokane. The attendees were: Ted McGregor, Lisa McBride, Jennifer Aspaas, Judge Rossmeissl, Judge Williams, Kevin O'Rourke, Bill Beatty, Ian Ledlin, Dan Brunner, Bill Hames, Greg Beeler, Pat Morrissey; also present were Mike Todd, Bev Benka, and Joe Harkrader from the Chapter 13 office. Members not present were Jake Miller, Ford Elsaesser and Judge Klobucher.

Bill Hames reported that Bankruptcy Bar funds are in a positive condition. He also reported that the association was intending to host a bankruptcy training session within the year, and also one focused on automation.

Judge Rossmeissl reported that Yakima chambers are busy and doing well, getting ready for CM/ECF in the next 4-5 months. His staff and Judge William's staff are looking at calendar programs used in other districts, particularly their features and compatibility. Ian asked about conversion regarding looking at older cases converted into PDF format, the images are no longer there that were in TIFF format. Ted said he was unaware as all items have been converted to his knowledge; he asked Ian to show him an example should he come across one in the future. All imaged documents have been converted, and all documents have been imaged beginning in 1997, and backward in some cases. However, if a document had not been imaged, it will not, of course, be available in PDF or any format. Dan said Jon Wyss from his office has created a program to convert TIFF to PDF but Ian said it appears there are no items at all in some cases to be converted.

Judge Rossmeissl said the new extern funded through the Bar Association is Jason Ketrick. He is bright and hardworking, and the judge feels they couldn't function as well without him and truly appreciate him. They were hopeful that they might receive an additional extern if funds are available through the Association. He said that a second extern would be wonderful to have, and

that it would permit the orders to be processed a bit quicker. Bill said he would look into the possibility.

Judge Williams, reporting for Judge Klobucher, said that he has taken some lift stay dockets and a couple of conflict cases. Ex parte orders have greatly increased in the last several months and Judge Klobucher deals with them also. There are 260 motions to lift stay average per month, roughly double from last year. Judge Klobucher's law clerk Helen is expecting a child in a few months and her work will need to be covered while she is gone.

Judge Williams said her chambers are not as smooth as usual as she's gone quite a bit due to her duties as Chief of the Chief Bankruptcy Judges for the circuit. She invited all to let her know if any particular problems are noted. The judges are spending a significant amount of time examining various calendaring programs, and hope to have a selection made by early December in anticipation of the conversion to CM/ECF. They foresee increased stress in December/January.

Ted reported that statistics are e-mailed each month to members of the committee, and are also posted on the internet. He reported that there has been only a very slight increase in filing in the district. He also reported that nationally for the period ending in March 2002 -2003, the increase was 7.1%, the circuit increase was 2.4% and the district was 3.0%. The work flow in the Clerk's office is going well, established standards for various items are consistently met. As to the budget, last year our court was in good shape, this coming year's budget has not yet been passed, and the judiciary is operating on a continuing resolution. Worst case scenario seems to be an 11% shortfall in what is needed, in addition to some changes in formulas by which funds are allocated. Using those worst case figures, it appears that the court will be O.K. He noted that presently the court is staffed at about 75% of its allowance, and this accounts for the optimism even in the face of severe shortfalls. Judge Williams complimented Ted as to the budget and to staff and services offered due to Ted's foresight which has positively affected the court.

He reported that the soft target date for going live with CM (Case Management) is estimated to be February 1, 2004. He reported that the court had converted all of its existing images to PDF format, which is required by CM, and that since the court has imaged every document filed since 1997, there were well over one million images. He also noted that the court has many other automation initiatives, and the intent is to salvage as many of these custom programs as possible for use in CM. He explained that CM comes with only limited "bells and whistles." To provide a sense of where the court is in automation, without ECF, he explained that of the 23,833 documents filed in September, 2003, 30% had no paper attached due to electronic filing programs in use, most notably with the Chapter 13 office, as well as several in house uses. Of the some 10,000 documents filed in Chapter 13s in September, 43% were electronic.

He said that he had sent out to all Association attorneys, an Items of Interest article that announced miscellaneous fee increases imposed by the Judicial Conference of the United States that increased virtually every fee. Of significant interest is the fee for filing a motion for modification to the automatic stay, abandonment or withdrawal of reference. He said that the increases will take effect on November 1, 2003. He also reported that on December 1, 2003 there very likely will be a change in the FRBP1007 that will eliminate the requirement for the debtor to provide his or her full Social

Security Number on the petition, but only require the last four digits be provided. However, the rule will require that the debtor provide a document with the full SS# that would not be technically "filed," thus not requiring that it be made available to the public at large. The complete SS# will, however, appear on the notice of the first meeting of creditors that is sent to parties in interest, but will not appear on the public data base. He also announced that the court is moving from RACER to PACER which is a nationally supported program and for which there will be a charge. RACER had no usable billing module, thus the fee was unable to be collected. This move is required because RACER cannot accommodate the new privacy rules. The Items of Interest article encouraged court users to preregister for PACER so as to avoid any break in access. He also reported that the judges had signed a general order exempting trustees, voluntary mediators and non-profit agencies from the fee. Lisa McBride asked if Chapter 7 trustees can access cases other than those in which they are trustees. Ted said such was possible, but that the trustees are expected to only use the free access when acting as a trustee in a case. The switch is set to occur on December 1, 2003 to coordinate with the changes to FRBP 1007.

The ECF system has a "free look" aspect to it, and once ECF becomes available, expected in early 2004, those users who use the system will be entitled to the "free look" as well as receiving e-mail notification of items filed in a particular case. The mechanics of this process are built into the ECF system, over which the court will have only limited control. Ted said Congress can still stop FRBP 1007 from taking effect if they act by November 30, 2003, but that such action was not considered likely. Ted said that the Items of Interest article provided detailed information as to where to find the revised official forms required to be used when filing a bankruptcy.

Dan asked whether the court would be putting in SS#s on the website if a document filed did not redact the Social Security Number. Ted said that whatever is "filed" with the court will be available on the internet, redacted or not. The rule makes clear that it is not the role of the court to redact such information, only to make it available to the public as "filed."

Jennifer, who uses ECF regularly in the Western District, said there are tricks to reduce charges incurred on PACER, such as entering the last date you want to view so as not to be charged for all documents filed, and previously viewed. Some docket entries are not always clear such as Notice of Appearance, but many attorneys put in detail as to who appeared. Ted said the court has a Dictionary Committee to develop a dictionary as to docket entries. Training will be important to users as to how to docket properly, since under ECF the act of filing is essentially the act of docketing. He said that under ECF the court will check docket entries for errors, and if they are not correct, the filing party will be advised of noted discrepancies, but that any corrections to be made will be expected to be accomplished by the filer. The court will have more "Quality Control" clerks rather than docketing clerks in the future. Pat Morrissey said that PACER seems difficult to him.

Judge Williams said that if attorneys need help, call the court and if attorneys see someone who continually incorrectly files electronically, call them and help them do it the right way. Once the court goes to electronic filing, more separate pleadings may need to be filed. Ian asked if attorneys should still file a judge's copy using electronic filing; Judge Williams said yes for awhile, until the system is running efficiently.

As a last part of his presentation, Ted displayed an empty box, approximately one cubic foot in volume, that is used to send closed files to the archives. He said that the court sends approximately 500 such boxes to the archives each year. He then displayed a package containing approximately 50 CDs, of about one cubic foot in volume, and said that the discs would store about four years of data, or what would amount to 2000 of the archive boxes. He said that storage of paper files is a growing problem and concern, particularly if the judiciary is burdened with paying for the storage.

Jake was not in attendance but told Ted the National U.S. Trustee will be placing more emphasis on civil enforcement issues. Judge Rossmeissl asked if anyone knew about changes concerning the conducting of meetings of creditors that might be coming up. Greg said there will be a meeting in Spokane for all panel trustees on November 3 called by the U.S. Trustee office. He said that Diane Tebelius, the regional U.S. Trustee will be speaking to the trustees and has asked all trustees to attend. Bill Hames said he heard practitioners will have to pay attorney fees if a case is dismissed due to substantial abuse. Judge Rossmeissl and Judge Williams said they don't see many such cases. If successful, Lisa asked if they would get fees from the U.S. Trustee office. Judge Rossmeissl asked if there is some statutory authority that supports such an action, or if it related to sanctions such as are authorized by FRBP 9011. Joe Harkrader said it is his understanding that it was more about disgorgement. Dan said his understanding is that fees incurred in a Chapter 7 case, were not payable if converted to a Chapter 13; he thinks the position has changed and they are now viewed as payable. Judge Rossmeissl said that he had heard there may even be an enforced dress code for first meetings. Another issue that appears to be coming to the fore is requiring attorneys to attend the meeting of creditors, as opposed to a legal assistant or para-legal. Greg said some attorneys regularly send paralegals to first meetings, but that a memo from the U. S. Trustee requires the attorney to attend. He said that he expected no great resistance to this requirement.

Bill Beatty reported from the U.S. Attorney's office. He said that Rolf was unable to attend due to the press of business. Bill said he is frequently asked about his retirement and said that he intends to work at least thru early 2005, and then his position would need to be filled. Every three years the U. S. Attorney's office is evaluated by a team of assistants from throughout the United States; the next local evaluation is scheduled for 2004 where trustees and attorneys will be contacted to comment on Bill and Rolf's performance. After Sept 11, 2001, the U.S. Attorney hired 5 new criminal attorneys, one assigned in Yakima and four in Spokane. He said that when this occurred he wondered how they would be kept busy, but that their work has so increased that they are actually having to decline cases. One was hired as to his expertise in fraud and Bill is hoping this attorney would be assigned to address Bankruptcy fraud cases. Another attorney was called to Iraq and another was detailed for a year to Eastern Europe. The U.S. Attorney's office is in the process of hiring another attorney to handle criminal work. Out of 19 attorneys in Spokane, 15 are handling criminal cases and four are handling civil. Five attorneys are stationed in Yakima. Civil cases are not getting as much priority, due to the emphasis on both white collar crime and terrorism. The case load is increasing, expected areas of increase are immigration and discrimination actions brought by federal employees. His office has had five such cases this year and they seem to require a good deal of time. The bankruptcy side of the office has been minimally impacted by this primarily due to the fact both Rolf and Bill feel that the bankruptcy cases ought not to be ignored. In the future, Bill is concerned as to who will handle these cases; they will need to be trained in bankruptcy area and it will probably be the next new person on board. Judge Rossmeissl asked if any bankruptcy fraud cases

are being prosecuted actively or filed and Bill wasn't aware of any.

Jennifer said the west side is working on another revision to the form Chapter 13 plan which has yet to be approved. Jennifer reported that in the Western District there are a significant number of Chapter 13 cases pending for which plans have not been confirmed, something approaching around 3000. Judge Overstreet is taking over all Chapter 13s from Judge Glover who is taking over the Everett calendar. Judge Overstreet will have about 5,000 Chapter 13 cases. It is expected that on November 1, 2003, a letter will be sent to the attorneys for debtors for all unconfirmed cases so they can discuss each such case with her. Judge Overstreet is aware that the Eastern District will be coming on line with ECF in the very near future, and offered any help she or others might be able to render.

Dan next gave the report from the Chapter 13 office. He said that at the end of September 2003, there were 627 unconfirmed Chapter 13 cases, 512 of which were under 90 days old and only six that are more than 6 months old. He observed that this was phenomenal in his opinion. Cases are moving through the process rapidly. The Chapter 13 office has about 5500 active cases, for the first 9 calendar months for 2002 and 2003, the figure of new filings was 1850 and 1849 respectively. Dan also pointed out the figure for disbursements for the fiscal year ending September 30, was \$22,814,582, which includes 2.2 million in attorney fees.

He next reported that Jon Wyss and he were invited to participate on a claims committee hosted by the Administrative Office in Washington. He then passed out a draft Proof of Claim form and Notice of Transfer of Claim form. He said that the draft which will likely become the national form is quite similar to the form developed and used in the district. The National Forms Committee will consider the changed forms for adoption in April, 2004, which will also be available through the internet in a PDF format and can be filled out and filed electronically. This will also include a math worker that will be available to calculate the figures used on the form. Other changes concern attachments, where the filer will be asked if there are attachments, and if so, instructions not to attach more than 10 pages. If the filer has more than 10 pages of attachments, they will be able to be scanned and bar coded automatically. When such attachments are received, the court will run the documents with the bar code through a scanner to attach the documents to the original case filed.

Ted said a shortcoming of ECF is that it doesn't address Proof of Claim forms. Dan said the case and claim dockets don't "talk" to each other. The Notice of Transfer of Claim form was developed to address the issue of claims being routinely transferred, particularly in the mortgage industry. Judge Williams asked how realistic it is that secondary mortgage market brokers will file a Notice of Transfer. Dan said he was not sure, but that they really needed to file a transfer of claim so that the claim can be easily tracked. If they don't, payments cannot be made. Ted said in the last five years \$195,000 has been tendered to the court in unclaimed funds, much of it from the Chapter 13 office. He also noted that such unclaimed funds tendered to the court are now listed on the court's website. Dan said that it was his observation that monies sent to creditors many times does not get to the correct processing level, thus they are not being looked at properly, are left unprocessed, and the funds are then tendered to the court. He said that his office spends a good deal of time and energy in making inquiries to the mortgage companies, old and new, and the debtor's attorneys to try to find the correct party to send money before it is tendered to the court. Jennifer thought a

specific form would encourage firms and attorneys to fill it out.

Judge Rossmeissl then commented as to the Chapter 13 case distribution within two areas within the district. He noted that a year ago it was even, but now there is about a 5% difference between the central areas and the eastern area. As to unconfirmed cases, 97% of Spokane cases are under 120 days old, 98% of Richland cases are under 120, Yakima is 91.8%, and Wenatchee is 85.7% under 120 days. Moses Lake was 50% last year with 80% of cases confirmed under 120 days now.

Dan said the way the present local rule on confirmation works, a 21 day period of more or less dead time is created, which has a delaying effect for confirmation of uncontested cases. The local rule says the objection to confirmation must be filed within 21 days. The Trustee's office looks at the 21 day period and will not recommend cases for confirmation during this period, which has the effect of slowing down confirmation of uncontested cases.

Dan suggests eliminating the 21 day objection period so that an uncontested case would not be "shelved," but could immediately be set up for confirmation. Dan said the value in expediting confirmation is to get monies flowing to creditors sooner. Payments that have adequate protection orders, such as mortgage payments, are disbursed as soon as possible and before confirmation. Dan says the ball shifts from the debtor's court to the trustee's court to modify the plan once the plan is confirmed. Bill Hames asked about someone coming in with a claim after the plan is confirmed and Bev said it's like that now and creditors such as the IRS tend to file their claims quickly. Priority claims - what happens if the plan is confirmed and then there's a claim; priority claims have to be paid in full. Kevin asked about notice to counsel before a contested hearing; notice is not provided, he is concerned as to once the plan is confirmed, certain rights may be adjudicated. Dan said a modification can be filed after confirmation; Kevin said it's not clear as to what can be done. Judge Rossmeissl said he's seen those cases but hasn't had problems. Bev said they did have a case where the debtor wanted to surrender and the creditor said take it to trial so the debtor dismissed the case. Judge Williams said there are many districts that confirm plans within days of the 341 and it works. Judge Williams asked Dan what exactly he would suggest. Dan said he wanted to have the local rule changed to eliminate the 21 day waiting period after the conclusion of the meeting of creditors.

Following discussion, language for a change to LBR 2083-1(i) was presented to the committee that they approved. Judge Williams asked if such a change was the recommendation of the Chapter 13 Sub-committee. Judge Rossmeissl said that it was. The committee recommended that the judges approve the language and send it out to the public for comment.

Next followed a discussion on an issue raised by Jennifer concerning whether or not the objection to confirmation time should be noted on the docket. Ted said that the preamble to the form plan contained the information, and that all creditors received a copy of the plan. Jennifer said that the PACER screens do not have a summary page, as is found on RACER, and that if the summary information is not put on the docket, it is difficult to find. Ted said that he would need to examine the ability of the court to provide such information, and if such was not able to be done, there ought not to be a rule requiring it. The discussion was to provide information that would be easily accessible to creditors as to when an objection to confirmation would need to be filed. Judge Williams suggested this idea be discussed by the Chapter 13 Sub-committee. Dan was not sure

what the committee could do since the issue is what can be displayed on the docket. Judge Rossmeissl said the national rule needs to be followed. Ted said he would find out what information can be put on the docket and what can be put on PACER in a summary format, such as is now available on RACER.

Next, the committee discussed the make up of the Chapter 13 Sub-committee. Ted reviewed the process, and explained that this committee endorsed the make up draft at its last meeting, but the working group took it back for one more look and some polishing of the language. The committee voted unanimously to adopt the draft as presented.

Judge Rossmeissl next discussed unbundling. He noted that our local rules incorporate the adopted state bar rules. He noted that the state rules concerning this issue have changed, and that this committee ought to appoint a working group to study what, if anything, the court should do in this regard. He also stated that he and Judge Glover discussed the issue, and felt that this is an area better dealt with legislatively through rules process, rather than on a case to case basis.

Judge Williams thought that the Advisory Committee should create a small group to discuss unbundling and to report back changes they suggest. Ted said at least one member of the Advisory Committee is usually appointed to such a working group along with other interested attorneys. Judge Rossmeissl said these changes were promoted for the benefit of legal aid type attorneys, and that that group would probably want representation on the working group. Judge Williams thinks the committee should have a creditor lawyer and probably a chapter 7 trustee. Judge Rossmeissl said this would affect almost everyone. Judge Williams identified several interest groups that perhaps should be represented, to include the judges, U.S. trustee, Ch 7 trustee, Ch 13 trustee, legal aid, and the state Attorney General's office. The judges will appoint the working group along the lines discussed; Pat, Dan, and Kevin volunteered to serve, and additional suggestions were Joe Jackson, Erik Bakke and Hal Flick. Ted said usually working groups meet through phone conference, can use video conferencing, and will occasionally meet in person, with not much travel.

Ted next discussed several suggested changes to local rules in anticipation of moving to CM/ECF. He said that he had reviewed all of the local rules for the above purpose and that he would like the committee, following discussion, to end with a recommendation to the judges so that the process of change could move to the public comment period. He suggested this so the changes could be in place before the conversion to CM/ECF. He then briefly went over the materials provided item by item.

Judge Williams asked about LBR 9001 concerning the suggestion that the term "mailing" would include "electronic transmission" without restriction. Ted said that the definition included the words "as authorized by FRBP 9036." This rule, he explained, allowed for electronic notice only if agreed to in writing by the party receiving the notice. Ted then expressed his thoughts concerning the ECF model that would require a party to accept electronic notice if they wished to participate in ECF. Ted said that some courts have drawn distinctions between initial service of process in Adversary Proceedings and Contested Matters and simple notice under rule 2002. He said that the change in the definition was not meant to resolve the issue of whether notice by the clerks office as a part of ECF was sufficient to satisfy notice and service requirements. Ted did point out that Dan had

contracted with an organization in Tennessee to serve notices for him. He said it operates much like the BNC does for the court. Dan said that it has been working very well, and that a part of the contract he has with the organization is to indemnify him if they failed to provide proper notice. Ted said that he does not consider the clerk's office to be the agent of a party required to give notice. Dan also noted that part of the deal with his Private Noticing Center is that he transmits the data electronically to them and they convert it into paper and send it to creditors and also electronically file a notice of service with the court. Ted said that the organization is authorized to electronically file documents pursuant to the Chapter 13 model adopted by the court. He said that attorneys need a sure way to send notice out in this district when it is their duty. Ted said that the court will give whatever notice it does as a part of ECF, but that it's up to the attorney to verify that everyone who should be, has been served, or noticed.

The committee approved recommending to the judges that the changes as presented, be adopted; Ted said he would sent them out for public comment in accordance with required procedures.

Next, Ted explained that he had also reviewed the Chapter 11 local rules, and had prepared drafts of changes. He said that when the rules were adopted several years before they had been somewhat chopped up to accommodate a requirement that there be no general redundancy with national rules. The suggestions were to make the rules be a bit more understandable and easier to use. He also prepared several local forms that he felt might be useful. He asked that the committee appoint a working group to study the suggestions and make a recommendation to the committee.

The committee voted that a working group be appointed; Kevin volunteered to be on the group, as did Bill on behalf of the U.S. Attorney. It was felt that there should be someone from the taxing agency and the U.S. Attorney. As above, the judges will appoint the members.

Judge Williams then inquired if there was any more business to be conducted. There being none, she then moved to the scheduling of the next meeting.

The next meeting of the committee was set for Friday, March 12, 2004 in Yakima. They also set Friday, February 20, 2004 as the date for the next meeting of the Chapter 13 Sub-committee.

The actions taken by this session of the Advisory Committee and assignments are:

- Recommended adoption of changes to various sub-paragraphs of LBR 2002-1, 2083-1, 5005-1, 9001-1, and 9004-1. Ted to move the process forward in the required manner;
- Created an Unbundling Working Group. Judges to appoint members;
- Approved the make-up of the Chapter 13 Sub-Committee. Ted to notify current members and advertise to the bar at large;
- Asked the Chapter 13 Sub-committee to discuss how objections to confirmation information should best be made available to parties in interest and report back;

- Established a Chapter 11 Local Rule Working Group to review changes to Chapter 11 related local rules. Judges to appoint members.

With that, the co-chairpersons thanked the group for their participation, noting that the court greatly benefitted from the work of the committee.