

FLNB Board of Advisors Meeting Summary

December 8, 2014 – 2:30pm Eastern/1:30 pm Central
Tallahassee Division Bankruptcy Courthouse 2nd Floor Conference Room

Attendees

Traci Abrams (Summary), Melissa McClure, Kathryn Hathaway, Mary Beth Colón, Philip Bates, Robert Bruner, and Jeffrey Dollinger

Updates re Old Business

Chapter 13 *Ad Hoc* Committee re Process Streamlining Effort

- National Mandatory Ch. 13 Plan: No decision has been made by the Judicial Conference concerning the implementation of a mandatory national Chapter 13 Plan.
- The following resources are available for review:
 - Preliminary Draft of the Proposed Amendments to the Federal Rules of Appellate, Bankruptcy, Civil and Criminal Procedure (beginning on page 104 with the form appearing on page 135) <http://www.uscourts.gov/uscourts/rules/preliminary-draft-proposed-amendments.pdf>
 - Advisory Committee on Bankruptcy Rules April 2-3, 2013 (beginning on page 97 with the form beginning on page 111) <http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Agenda%20Books/Bankruptcy/BK2013-04.pdf>.
 - September Summary of the Report of the Judicial Conference Committee on Rules of Practice and Procedure (beginning on page 10) <http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Reports/ST09-2014.pdf>
- “No Look Fees”: A proposal was tendered by the *ad hoc* committee and is under review by Judge Specie.

2015 Newsletter Articles by Board Members

- Articles are encouraged and can be submitted at any time to Julie Gibson for publication in the next available newsletter.

Digital Court Reporting (DCR)

- Testing continues with DCR running side by side with a court reporter. We have used DCR as the “official” record for one emergency hearing.
- DCR will be in place full time in the Tallahassee and Pensacola divisions by March 1, 2015. Court reporters will continue to be used in Gainesville and Panama City for the time being.
- Internal and external policies on the use of DCR are under development.
- Judge Specie has decided that all Chapter 11 hearings will be recorded using a court reporter. Judge Specie may request a court reporter for other types of hearings based on her discretion.

Local Rules Committee

- Bar committee members include Bill Miller (Chair), Brian Rich, Rick Savage, Michael Moody, Jeff Childers, Karin Garvin, Roland Kiehn, and Sharon Sperling.
- The last meeting was held on 11/17/2014. Language is being finalized in the draft copy by Michael Moody, and the committee has been tasked with writing committee notes to be included in the publication. The committee notes will serve to remind future committee members of why certain changes were made.
- The target publication date is April 15, 2015.

FY2015 Budget Outlook

- The federal government is operating under a continuing resolution which expires December 11, 2014. It is unclear at this point what will happen next. The best case scenario is that an additional continuing resolution is passed to keep the government operating at least until the 114th Congress convenes.

Mortgage Modification Mediation (MMM) Program Statewide Agreement

- FLNB’s documentation is currently in line with that of the Florida Middle (FLMB) and Florida Southern (FLSB) Bankruptcy Courts. FLNB and FLMB do not require the use of the docUmods form preparation software while FLSB has made that a requirement. All Florida courts require mediation participants to use the communication Portal.
- A revised section on adequate protection payments is being discussed by the three Florida districts. The proposed language is under review by Chief Judge Specie.

CM/ECF Server Centralization Project

- The Administrative Office of U.S. Courts required all court unit CM/ECF servers to be centralized before courts could participate in the upgrade to CM/ECF NextGen software. The anticipated release of NextGen is February 2015.
- We have centralized our software, and testing by court Operations staff has begun.
- This requirement will be completed on or about by January 31, 2015.

New Business

FY2016 Budget Outlook

- Bankruptcy courts are currently set to receive an almost 10% shared administrative services (SAS) cut to their staffing formulas for fiscal year 2016 based on an assumption that bankruptcy IT staff will be further reduced, shared or eliminated through sharing arrangements with other court units. The Committee on the Administration of the Bankruptcy System of the Judicial Conference of the United States has indicated to the Judicial Resources Committee that the cut is no longer needed due to prior staffing reductions within the bankruptcy unit which have exceeded staffing reduction goals set for FY2016.
- The estimated result of the planned fiscal year 2016 bankruptcy clerks' staffing allocation is 2,568 fewer positions than the allocation to the bankruptcy clerks' offices in fiscal year 2012. It is unknown at this time whether or not Florida Northern's staffing formula will be reduced per the current SAS plan.
- Jeff Dollinger asked if increased automation could help the bankruptcy community. Traci Abrams responded that the Bankruptcy unit has already been responsible for creating the lion's share of the judiciary's in-house automation programs and tools and has been a leader in leveraging off-the-shelf automation and technology tools. As a result, Bankruptcy is more reliant on its IT staff to maintain these systems and to work hand in hand with Operations staff than is currently the case with other court unit types.

Staff Updates

- CM/ECF Analyst Debi Boone received a promotional job offer from the United States District Court for the Middle District of Georgia as Operations Supervisor. As a result, we advertised for a replacement staff member.
- Tammi Boswell was selected for the position and will begin working in the Tallahassee division as part of the Systems and Operations Support (SOS) department on January 12, 2015.
- In addition to her mortgage processing experience within the banking industry, Tammi brings with her a wealth of bankruptcy experience from the Western District of Louisiana where she worked from 1996 to 2012. Tammi's court responsibilities ranged from case management to quality control to CM/ECF support/trouble shooting including training, event testing and CM/ECF Dictionary work. Tammi also created and assisted with the creation and upkeep of operational procedures and CM/ECF training aids.

Noticing Shift Project

- Florida Northern is one of the few courts in the country that has retained responsibility for sending notices on the behalf of parties. The Judicial Conference has targeted noticing reductions by courts as an area that will provide cost containment benefits for the judiciary and for the taxpayers. Savings will help to retain qualified staff.
- The new noticing policy is effective 1/1/2015, was first announced by Judge Specie during the September 2014 Bar Seminar, and has since been advertised through the [court's internet site](#), newsletter and email announcements.

- The policy applies to attorneys, trustees and in most cases *pro se* Debtors. Pursuant to 11 U.S.C. §101(42), the United States Trustee's Office is exempt. The Clerk's Office will continue to provide noticing services to this governmental unit and to attorneys who agree to represent Debtors *pro bono*.
- It is estimated that the implementation of the project will save between \$35,000 and \$40,000 in annual Bankruptcy Noticing Center (BNC) costs.
- Kathryn Hathaway asked if any board members had experience using a particular private noticing service. Mary Beth Colón responded in the affirmative and indicated that she would share the vendor's information with the group via email.
- [Addendum: The *Guide to Judiciary Policy* has recently been updated barring courts from using the BNC for distributing any notice other than those that the court is required to distribute by law.]

Motions to Sell Free and Clear of Liens/Notice of Intent to Sell (Melissa McClure)

- Rule 6004 as well as Local Rule 6004-1 C require that both a motion and a separate notice be filed. Those documents are being filed at the same time, and that is where the problem comes in. The Motion has to be served on interested parties (debtor, debtor's attorney, trustee, lienholder(s)) and the Notice has to be served on all creditors. The Notice also has to contain an objection deadline and the date of the hearing on the motion (F.R.B.P. 6004(c)). Case law that indicates that a sale free and clear only needs a hearing if there is an objection.
- One possible solution that **has not yet been vetted by Judge Specie** is as follows:
 - The Trustee (or Debtor) files the Motion and serve it properly (debtor, debtor's attorney, trustee, lienholder(s)) per the Rules.
 - The Courtroom Deputy sets a hearing on the Motion in CM/ECF.
 - The filer will then prepare and file the *Notice of Intent to Sell* and serve it on all creditors. The Notice should include an objection deadline as well as the hearing date taken from the Courtroom Deputy's hearing notice in CM/ECF.
 - If the response time passes and no objections have been filed, the order can be requested and forwarded to chambers. The docketing of the order will remove the hearing from the calendar. This process will meet the requirements of both the Rules and the Local Rules, and if the order is submitted promptly, will eliminate unnecessary hearings. The only hearings that should remain on the calendar are those in which an objection to the motion has been filed.
- The current procedure and Local Rule is being revised by the Local Rules committee. There is talk about handling these with a preliminary hearing order similar to our relief from stay process (motion NOT filed on negative notice). Until the revisions have been made, this two-step process will suffice.
- Jeff Dollinger inquired about the applicability of this process to sales as a matter of course where no order is necessary and provided several situational examples.
- Melissa plans to discuss this process further with Kathryn Hathaway and Mary Beth Colón post-meeting.

Expiring Board Member Terms

- All board member terms expire on December 31, 2014. The members present at this meeting agreed to continue to serve through 2015.

- [Addendum: An email was sent after the meeting to Steven Jurnovoy, William Miller, Bill Miller, and Tracy Strom inquiring about their desired membership status. All agreed to serve during 2015.]

Board Member Feedback

- Jeff Dollinger noted that FLMB has added language to their lien stripping orders (“...to the extent permitted by current case law”) to take changing case law into account and noted that the Supreme Court has just agreed to take a case on this issue.