

2007 RECOMMENDATIONS TO THE BANKRUPTCY JUDGES FOR THE NORTHERN DISTRICT OF OHIO

REPORT OF THE ATTORNEY CONSTITUENT GROUP TO THE STRATEGIC PLANNING COMMISSION

The 2007 Recommendations to the Bankruptcy Judges for the Northern District of Ohio was prepared by the Attorney Constituent Group of the Strategic Planning Commission using the data obtained from the March, 2007 Bench-Bar Conference.

2006-2007 Attorney Constituent Group
September, 2007



TO THE BENCH AND THE CLERK:

Chief Judge Randolph Baxter
Judge Richard L. Speer
Judge Marilyn Shea-Stonum
Judge Pat E. Morgenstern-Clarren
Judge Russ Kendig
Judge Mary Ann Whipple
Judge Arthur I. Harris
Judge Kay Woods
Kenneth J. Hirz, Clerk of Court

The 2007 Recommendations to the Bankruptcy Judges for the Northern District of Ohio (the “Report”) contains recommendations from the Attorney Constituent Group (the “ACG”) of the Strategic Planning Commission to the Bench and the Clerk’s office. In preparing the Report, the process used by the ACG involved compiling data obtained at the March, 2007 Bench-Bar Conference and from the area bar associations, following which the ACG engaged in extensive analysis of such data in order to identify and address predominant issues.

As a follow-up to this Report, the ACG requests a meeting with the Bankruptcy Judges for the Northern District of Ohio to discuss the implementation of the recommendations set forth herein. Such follow up meeting will also help the ACG to understand the Bench’s position with respect to the Report and its recommendations which, in turn, will help the ACG to promote future Bench-Bar Conferences as meaningful opportunities to address Bench-Bar concerns.

The Report addresses the following predominant issues and provides recommendations that will prove to be beneficial the Bench, the Bar and the Bankruptcy Estate.

Clerk of Courts/ Administrative Matters

1. ECF Event Codes
2. Educational Information
3. Helpdesk Access
4. Standard use of Form 20A and 20B
5. “Overview of Orders” Link

Stay Issues

Comfort Orders

Adversary Proceedings

1. Pretrial Hearings
2. Specialized Pretrial Orders

Chapter 7 and 13

Domestic Support Obligations

Chapter 13

1. Proofs of Claims
2. Adequate Protection Payments
3. Conduit Mortgage Payments

Chapter 11

1. Fee Applications
2. Disclosure Statements
3. Model Plans for the Individual Debtor/Small Businesses

Court Specific

1. Witness Requirement
2. Use of Objection Clauses
3. Dual Hearing Procedures
4. Teleconferencing for Hearings
5. Organization of Dockets
6. Settlement Notification

Thank you for your consideration and time when reviewing the Report. It has been a pleasure to serve both the Bench and the Bar in this effort.

Respectfully Submitted,

The Attorney Constituent Group of the Strategic Planning Commission

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CLERK OF COURTS/ADMINISTRATIVE MATTERS

The ACG recommends the following to the Judges of the United States Bankruptcy Court for the Northern District of Ohio and to the Clerk of Bankruptcy Court in order to assist the Bar in their practice:

I. Recommendations to the Clerk:

1. Continue review of the ECF event codes (narrowing 1600 codes to a more useful number) with Clerk IT/Jason Wenning and enhance the choice of event code information with inclusion of definitions/instructions.

Since May 2007, Jason Wenning (Systems Analyst Programmer) has been working with representatives of the ACG, the Cleveland Chapter 13 Trustee's Office, and the United States Trustee's Office to review ECF docket events. The purpose of this review is to create new, needed events and eliminate unnecessary events. To date, about 15 events have been added, and 400 events have been removed from the system. The deletions include events that have never been used, events that have been replaced by more pertinent events, events that were no longer useful because their dependent event had been removed, and events that were combined. The Court supports the ACG's recommendation to continue this review. This further review will include the Motions and Orders sections of ECF, which will require significant input from outside users.

Create separate ECF event codes for: employee income record/pay advices and Adversary Proceeding/Answer.

These docket events already exist. Under Bankruptcy, Other, there is an event titled Employee Income Records. Under Adversary, Answer, the applicable Answer events include Motion/Application/Amended Answer and Complaint, 3rd, cross, counter. The Court welcomes suggestions for additional docket events.

2. Send periodic blast email advising counsel that, upon their request, ECF refresher training is available at any time for counsel or staff.

The Court supports the ACG's recommendation. Refresher training is typically scheduled in conjunction with new ECF registrant classes, and attorneys are welcome to contact the local Court office to register for classes. Since periodic email blasts have been the primary means to communicate information to ECF practitioners, reminders regarding

ECF refresher training could be routinely added to all email messages. Also, the Clerk's Office has been and will continue creating ECF online training modules (located on the ECF menu of the Court's website) focusing on procedures that are frequently the subject of help desk calls.

3. Prominently display ECF Helpdesk numbers/hours under the ECF Case Filing link on website with the ECF Menu. Provide for additional ECF Helpdesk hours including 5-9 p.m. (or later) and weekend staffing (Suggestion includes having one central office for the entire district and that number could be different per the day of the week (each Clerk office having one day per week).

The ECF Help Desk phone numbers have been posted on the ECF menu of the Court's web page since December 2002. The office hours, which are 9:00 AM to 4:00 PM in all offices, have recently been added to the posting. Clarification is needed from the ACG as to the desired specific location for this information. However, the Court does not support the ACG's recommendation to provide after-hour and weekend Help Desk staffing. ECF has been in operation for more than 4 years; although after-hour and weekend Help Desk support may have been beneficial during the infancy of ECF, such support is no longer necessary. The number and diversity of Help Desk calls have been reduced, and can be addressed during normal work hours.

II. Recommendations to the Bench:

1. Recommend standard use of Form 20A Notice of Motions and Form 20B Notice of Objection to Claim, both of which would state the objection/response deadline, allowing for greater certainty for both parties and the Court.

Local Rule 9013-1(a) presently requires that notice in the nature of Official Forms 20A/20B be given. Under the rule, the notice requirement may be satisfied either by incorporation in the document itself or on a separate document such as Official Form 20A/20B. Requiring notice under Local Rule 9013-1(a) to be given on a separate document, instead of incorporating it in the document itself, would necessitate amendment of Local Rule 9013-1(a). This issue will be referred to the bench Rules Committee for evaluation in connection with any overall consideration of the Local Rules.

2. Recommend creating a link on the Website under “Judges’ Information” for Overview of Orders.

At the request of the ACG, an Overview of Orders document was created and linked to the Judges’ Information menu of the Court’s website in late 2006. It includes references to all General Orders and Administrative Orders found on the Judges’ Information menu, organized by subject matter. The document is updated as new orders are added to the website.

STAY ISSUES

I. Recommendation: None

At this time, the ACG is not making recommendations to the Judges of the United States Bankruptcy Court for the Northern District of Ohio with regard to stay issues and comfort orders under 11 U.S.C. §362(c)(4)(A)(i). The data obtained at the March, 2007 Bench-Bar Conference indicates that the Bar favors the comfort order forms utilized in the Akron and Youngstown Courts. However, most practitioners are proceeding with the traditional motion for relief from stay forms due to the fact that most Courts do not have procedures in place for emergency hearings that might result, as a matter of course, in seeking comfort orders.

The Bench will adopt a General Order to implement this procedure district wide.

ADVERSARY PROCEEDINGS

I. Recommendation: Pretrial Hearings

The ACG recommends that the Judges of the United States Bankruptcy Court for the Northern District of Ohio adopt a policy of encouraging pretrials to be held no sooner than sixty (60) days nor later than seventy-five (75) days after the date that Summons is issued in an adversary proceeding and further recommends that initial disclosures required under Fed. R. Bankr. P. 7026 and Fed. R. Civ. P. 26(a) be encouraged by all Judges.

Supporting Rationale:

Based on feedback received at the March 2007, Bench-Bar Conference, it appears that counsel involved in adversary proceedings welcome the scheduling of a formal pretrial relatively early in the proceedings. However, this must be balanced with concern expressed by others that, if the pretrial is scheduled too early, meaningful and effective scheduling cannot be accomplished.

A pretrial held in the window of sixty (60) to seventy-five (75) days after issuance of Summons would meet both these concerns. Particularly if coupled with Fed. R. Civ. P. Rule 26(a) initial disclosures, such a pretrial permits counsel to become familiar with the basic facts of the case so as to permit meaningful settlement discussions, and realistic calendaring of discovery, further pretrials, and other procedures.

The Judges recognize the rationale behind the ACG's request for an initial pretrial "in the window of sixty (60) to seventy-five (75) days after issuance of Summons." The Judges have discussed their various practices regarding initial pretrials (some earlier than the suggested window and some later). After this discussion, the Judges agreed that standardization for the timing of initial pretrials did not outweigh the need for each Judge to be able to manage his/her own docket in the way he/she deemed best. The Judges did agree, however, to post their practices about initial pretrials on their websites or otherwise make such information available so that practitioners know what to expect.

II. Recommendation: Specialized Pretrial Orders

The ACG recommends to the Judges of the United States Bankruptcy for the Northern District of Ohio that they consider specialized pretrial or case management orders on certain common proceedings such as student loan, discharge actions and preference avoidance actions.

Supporting Rationale:

Many of the participants at the March 2007, Bench Bar Conference were impressed with the student loan trial order being utilized by Judge Russ Kendig in Canton. Having a case management or trial order which focuses on the peculiar elements and evidentiary bases of cases frequently coming before the Court helps both the Court and the parties to narrow issues and focus on the critical elements of the case-in-chief and the defense.

In addition to student loan discharge cases under 11 U.S.C. § 523(a)(8), the participants at the Bench-Bar Conference, as well as the ACG, believe that this approach could also be utilized in preference avoidance actions under 11 U.S.C. § 547, where the elements and evidence are fairly well defined and lend themselves to cataloguing. For example, the statutory elements of preference avoidance under section 547(b) and the statutory defenses under section 547(c) suggest manageable “check lists” to narrow the issues.

The Judges decline to adopt this recommendation and believe that it is the responsibility of those lawyers who file adversary proceedings to know and understand the "peculiar elements and evidentiary bases" of the cases that they file.

CHAPTER 7 AND CHAPTER 13

I. Recommendation: Domestic Support Obligations

The ACG recommends that the Judges of the United States Bankruptcy for the Northern District of Ohio adopt a local rule with respect to the proper scheduling of domestic support obligations. The proposed rule would require that both the obligee (support recipient) and the appropriate support enforcement agency be listed in Schedule E of a debtor's schedules.

Supporting Rationale:

Bankruptcy Code Sections 704(a)(10) and 1302(b)(6) require that the Chapter 7 Trustee and the Chapter 13 Trustee provide specific notices (as described in each of those sections) of such claim to the "holder" of the domestic support claim *and* the state child support enforcement agency of such claim. Oftentimes, and perhaps more often than not, debtors do not schedule the holder of the claim, but only the support enforcement agency. In many instances, if the debtor is current on his/her support obligation, there is no debt listed in Schedule E, notwithstanding the requirement that all debts be listed in a debtors' schedules regardless of whether they are current.

The ACG recommends adoption of a rule that would facilitate the timely issuance of the required notices by the trustees, resulting in the timely notification to the claim holder and support enforcement agency of the pendency of the case and the rights of the parties. Such rule would not need to be elaborate. See, e.g., L.R. 4002-1(b), (TN-M) that states the following:

Domestic Support Obligations. With respect to each domestic support obligation, the debtor shall include on schedule E to Official Form 6:

- (1) the name, address and telephone number of each claim holder (the names of minor children shall not be revealed); and
- (2) the name, address and telephone number of the child support enforcement agency for the state in which each claim holder resides.

The Judges decline to adopt this recommendation. Instead, the Court encourages the bar to develop procedures similar to those which have developed in OH southern where the trustees ask debtors to provide a worksheet to them addressing any DSO notification issues in the particular case. A PDF of that worksheet is attached as Exhibit A. Among other advantages, this provides the trustee with a very direct policing mechanism and doesn't clutter the schedules with ambiguous and possibly sensitive information.

CHAPTER 13

Based on the Bar's request for consistency among the Courts, the ACG facilitated discussions with all five area Chapter 13 Trustees: Akron, Cleveland, Canton, Toledo and Youngstown, resulting in a meeting with *all* area Chapter 13 Trustees. The following are Rules and Plan Provisions that the Chapter 13 Trustees propose in order to create some level of consistency and to allow the Chapter 13 Trustees to administer Chapter 13 bankruptcy estates far more efficiently.

I. Rules for Proofs of Claims

(Recommended by all Chapter 13 Trustees for the Northern District of Ohio)

1. A proof of claim must be filed in order for a creditor to be paid in the absence of an order requiring a specific payment. The address on the face of the proof of claim must indicate where payments should be mailed. A second address can be included on the face of the proof of claim if notices are to be sent to a different location. In the absence of an amended proof of claim or a notice of change of address filed with the court, the address on the proof of claim will serve as the address for payments. (It is the intent of this rule to provide trustees with addresses for the remittance of payments.)
2. The proof of claim form must summarize all components of the claim that is being asserted including an interest rate and an arrearage amount. Failure to provide this information on the face of the claim will result in the nonpayment of interest or arrearages, regardless of a plan provision, unless a separate order is entered. (The belief is that it is unreasonable to expect parties to analyze the attachments to a proof of claim in order to determine how a claim should be paid.)
3. The fixed monthly payments made to secured creditors will be determined by the plan or by an order, except for mortgage payments. The proof of claim will control the amount of the monthly mortgage payments if indicated on face of the claim otherwise the plan will control.
4. The mortgage claim that indicates an arrearage must include an addendum that delineates the calculation of the arrearage.

In bankruptcy the line between procedure and substance is often blurry at best. In the view of the Bench, these recommendations emerging from the dialogue among the district's Chapter 13 Trustees encroach on substantive requirements governing proofs of claim in the Code, the Rules and the Official Forms. As the judges must refrain from rendering advisory opinions on substantive areas of law, the Bench cannot adopt these proposed requirements, either through the rules process or by any standing administrative order.

II. Rules for Adequate Protection Payments

(Approved by all Chapter 13 Trustees in the Northern District of Ohio.)

1. The amount of the adequate protection payments should be the same as the installment payment amount to be made throughout the life of the plan. (This rule allows for the trustee to keep the same monthly payments for the life of the plan without having to make changes at confirmation. It also provides the creditors with a consistent distribution amount.)
2. The adequate protection payments will begin to accrue on the first of the month following the filing of the plan.
3. The Chapter 13 Trustee will begin to disburse adequate protection payments as soon as a proof of claim or an order has been filed with the court and the trustee has received enough funds from which the payments may be disbursed. (A proof of claim or an order is necessary to establish the correct mailing address for the payments.)
4. The adequate protection disbursements will be mailed monthly as soon as practicable.
5. The trustee will receive the allowed percentage fee on adequate protection payments disbursed by the trustee prior to plan confirmation.
6. If the case is dismissed or converted, the trustee will not be required to recover any adequate protection payments made in accordance with this rule.

These rules are being proposed to eliminate the need for separate adequate protection orders and are necessary in order to provide the trustee with authority and a structure in which to disburse adequate protection payments prior to confirmation and to allow the trustee to receive fees on those disbursements.

The Bench will continue to evaluate whether a uniform procedure regarding adequate protection payments under Section 1326(a) can be adopted.

III. Adoption of Plan Provisions Involving Mortgages

(Approved by the Akron Chapter 13 Trustee, the Cleveland Chapter 13 Trustee, the Canton Chapter 13 Trustee)

The above area trustees recommend the following provisions to be included in their form Chapter 13 Plan.

____The mortgage is current and the payments to the mortgage holder will be paid by the debtor when due.

____The mortgage is delinquent by an estimated \$_____ (subject to a contrary proof of claim unless an objection is filed and an order establishes a different arrearage amount) and will be paid by the trustee pro rata with all other timely filed proof of claims not receiving a fixed payment. The payments to the mortgage holder will be paid by the debtor when due because the debtor is less than two month delinquent.

____The mortgage is delinquent by an estimated \$_____ (subject to a contrary proof of claim unless an objection is filed and an order establishes a different arrearage amount) and will be paid by the trustee pro rata with all other timely filed proof of claims not receiving a fixed payment. If the mortgage is delinquent by more than two months, the payment to the mortgage holder will be paid as a conduit by the Chapter 13 Trustee as follows:

1. The first mortgage payment of \$_____ (subject to a contrary proof of claim unless an objection is filed and an order establishes a different payment amount) will accrue on the first day of the month following the filing of the petition.
2. Debtor is responsible for making certain that wage deductions are sufficient to make the initial payment and, if not, debtor is responsible for paying additional funds to trustee in order to make the payments as set forth.
3. Disbursements from the chapter 13 trustee will begin with the first disbursement regularly made by the trustee once sufficient funds are available to make the full payment and only if a proof of claim has been filed. Mortgage payments will have a priority over all other fixed payments.
4. An amended proof of claim or a notice must be filed with the clerk to change the monthly payment amounts for mortgage creditors. Changes in payments will be made within 30 days after notice is received. The reason for the change in the payment amount must be explained. Changes in escrow balances must be

supported by appropriate documentation. If an objection to the change in payment is filed, the trustee will pay the new amount until ordered otherwise.

5. Two or three months prior to the conclusion of a plan, the trustee will notify the debtor's attorney. The debtor's attorney must file a motion to determine if the mortgage is current and give proper notice. Once an order has been entered finding the mortgage current and all creditors beside the conduit mortgage payments have been paid, the case may proceed to closing.
6. The trustee will give notice to the debtor of the last date on which the trustee paid the conduit mortgage payments along with the address to which this payment was sent and the amount of the payment.

In bankruptcy the line between procedure and substance is often blurry at best. In the view of the Bench, these recommendations emerging from the dialogue among the district's Chapter 13 Trustees encroach on substantive requirements in the Code, the Rules and the Official Forms. As the judges must refrain from rendering advisory opinions on substantive areas of law, the Bench cannot adopt these proposed requirements, either through the rules process or by any standing administrative order.

CHAPTER 11

I. Recommendation: Fee Applications

The ACG recommends that the Judges of the United States Bankruptcy Court for the Northern District of Ohio utilize a model fee application throughout the Northern District of Ohio.

Supporting Rationale:

A model fee application would reduce the time that professionals spend in preparing fee applications, yet simultaneously ensure that the Court and interested parties receive all information necessary for a meaningful review of requested compensation.

Each judge finds different information useful in considering fee applications and the Judges want to preserve the ability to consider the unique characteristics of the particular case at hand. Thus, absent a more specific articulation of the perceived need for adopting a model fee application, the Judges decline to adopt this recommendation.

II. Recommendation: Disclosure Statements

The ACG recommends to the Judges of the United States Bankruptcy Court for the Northern District of Ohio that Chief Judge Baxter's Administrative Order 94-3 (disclosure statement checklist) be an administrative order for the entire Northern District of Ohio. In the alternative, each judge should post a checklist of items in order to provide guidance to practitioners in preparing disclosure statements.

Supporting Rationale:

Administrative Order 94-3 is favored because of the detailed guidance that it provides professionals in connection with preparing disclosure statements before Chief Judge Baxter. The idea is to expand the scope and use of Administrative Order 94-3. If some of the judges' views are different from Administrative Order 94-3, then the ACG suggests that each judge provide a checklist of desired items to be included in disclosure statements proffered in their respective cases. In addition to promoting consistency throughout the district, procedural guidance with respect to disclosure statements will increase efficiency among practitioners and reduce the expense to estates.

II. Recommendation: Model Plan for Individual Debtors and Small Businesses

The ACG recommends that the Judges of the United States Bankruptcy Court for the Northern District of Ohio utilize a model plan for individual debtors and small businesses.

Supporting Rationale:

Because each Chapter 11 Bankruptcy is unique and fact-specific, a model plan is suggested not to be restrictive or stringent in terms of content, but rather consistent and efficient in terms of preparation, presentation, and review. For instance, the proposed model plans would contain standard categories and headings for professionals to insert their unique facts.

The Judges concur in this recommendation and direct practitioners to the work of the National Advisory Rules Committee which approved the recommendations of the Committee on Rules of Practice and Procedure regarding the proposed amendment to, inter alia, Bankruptcy Rule 9009 which incorporates proposed Official Form 25A, i.e., a template for reorganization plans in small business cases under chapter 11. If the amendments to that rule become final in December 2008, the use of Form 25A will be optional, rather than required. The Judges encourage practitioners to look to Form 25A if they choose to use a model form and see no reason why use of that form should not occur immediately in appropriate cases.

COURT SPECIFIC RECOMMENDATIONS

ALL COURTS

I. Recommendation Definitive Statement Regarding Evidentiary vs. Non-Evidentiary Nature of Hearings

The ACG recommends that the Judges of the United States Bankruptcy Court for the Northern District of Ohio (Cleveland) enter a standing Administrative Order providing as follows:

“All scheduled hearings are non-evidentiary and counsel need not bring a witness to such hearings unless the Court (a) specifically orders an evidentiary hearing in advance of such evidentiary hearing; or (b) enters an order for the debtor to appear and show cause for failure to appear at a meeting of creditors conducted pursuant to 11 U.S.C. § 341.”

Supporting Rationale:

On repeated occasions, the Bar made note of its desire for clarification of whether hearings would be evidentiary or non-evidentiary in nature. The Bar recognizes that, particularly in the case of initial hearings, the Court routinely treats hearings as non-evidentiary until the issues have been previewed and streamlined for adjudication. Nevertheless, the potential for an unanticipated exception to general custom frequently causes attorneys and clients to expend the time, and incur the expense, of preparing for an evidentiary hearing prematurely and often repeatedly. It goes without saying that hearing preparation is costly in terms of both actual cost (*e.g.*, attorneys’ fees and costs, travel costs, document replication, *etc.*) and opportunity cost (*e.g.*, a day away from the office for a small business owner). The rationale for clarifying when hearings are evidentiary, therefore, is two-fold: (1) to provide debtor and non-debtor clients and witnesses with reasonable notice and opportunity to prepare for what may be an evidentiary hearing, Fed. R. Bankr. P. 9014(e); and (2) to avoid duplicating or unnecessarily expending the time, and incurring the expense, corresponding to such preparation.

The ACG believes that foregoing Administrative Order, *which merely embodies current judicial custom*, affords clients and practitioners a degree of certainty upon which they can rely in preparing their cases, while nevertheless preserving substantial judicial discretion. Accordingly, the ACG recommends that it be approved.

The Judges appreciate the desire of the bar to have clarity with respect to whether a hearing will be evidentiary. Rather than adopt a district wide order, each judge has committed to communicate to the bar his or her clearly articulated expectations regarding the nature of hearings.

CLEVELAND COURTS

I. Recommendation: Objection Clauses

The ACG recommends that the Judges of the United States Bankruptcy Court for the Northern District of Ohio (Cleveland) utilize and enforce an objection clause in the Notice of Motion/Objection (Forms 20A and 20B).

Supporting Rationale:

The Bench-Bar Conference generated substantial discussion regarding the use of “objection clauses” in contested matters in the Cleveland Court. The overwhelming majority of practitioners request that all of the Judges adopt the use of this practice as the rule rather than as the exception.

This practice finds specific support and authorization in Bankruptcy Code Section 102(1)(B)(i), Rule 9014(a) of the Bankruptcy Rules, and Local Rule 9013-1(b) & (d).

The ACG believes that, based upon the discussions held among the practitioners at the Bench-Bar Conference, this procedure would confer significant benefit upon all parties – the Court, the Bar, clients and the estate. The elimination of unopposed matters from the Court’s docket calls would shorten the length of the dockets, resulting in a time savings to the Court and the Bar. As a result, the estate and clients (debtors and non-debtor third parties) would realize an economic benefit from eliminating what the Bar views as unproductive court appearances.

II. Recommendation: Dual Hearing Procedures

The ACG recommends that the Judges of the United States Bankruptcy Court for the Northern District of Ohio (Cleveland) implement one of the following procedures for the Bar to utilize in the event of conflicting hearings during the same day.

Procedure One: Automatically recalling matters at the end of the docket for those matters where an attorney was not in the courtroom when the matter was initially called.

Procedure Two: Utilizing an early check-in system by attorneys who have competing dockets. Attorneys would check in with the Courtroom Deputy prior to the beginning of a docket in order to inform the Court of their presence and of the conflicting docket. If the matter is called and an attorney is not present due to a competing hearing, then the matter would be placed at the end of the docket if the attorney previously checked-in with the Courtroom Deputy.

Supporting Rationale:

Attorneys attending multiple hearings often have conflicting dockets in different courtrooms. Because it can be difficult to speak with the bailiff during the docket, the attorney with multiple matters cannot communicate such conflict to the Court. In some circumstances, that attorney may not be present when the case is called. The foregoing recommendation would eliminate the time and costs expended by the Bench and the Bar and, in turn, the Bankruptcy estate with regard to Motions for Reconsideration and/or having multiple attorneys attending dockets in the same location.

In order to minimize practitioner abuse, the Cleveland judges will continue their respective present procedures in this regard. It is incumbent upon each practitioner to inform the Court, in advance of the hearing, if a delay is anticipated. Where such is impractical, each situation will be addressed on a case-by-case basis.

III. Recommendation: Town Hall Meeting

Based upon a review of the comments received from the Bench and the Bar at the Bench-Bar Conference, and for the reasons set forth more fully below, the ACG respectfully requests that the Cleveland Bench schedule a Town Hall Meeting to address the following topics in addition to the foregoing recommendations:

Routine Teleconferencing for Hearings and Pretrial Conferences

On repeated occasions, the Bar made note of its desire routinely to be able to attend and participate telephonically in hearings and pretrial conferences, with more emphasis on the latter. The rationale for such request was time and cost savings for debtor and non-debtor clients and estates. Although the Bar recognizes the preference of many Judges to conduct hearings and pre-trial conferences in person, the Bar also believes that the benefit does not outweigh the burden, particularly where routine and/or largely procedural matters are involved.

Recognizing that the request for routine telephonic accommodations is or may be contrary to all or certain of the Judges' philosophies on effective dispute resolution—or simply viewed as an accommodation with respect to which the benefit does not outweigh the burden—the ACG has declined to make a formal recommendation to the Bench in this regard unless and until the perspective of the Bench is understood fully. Given the high degree of emphasis placed by the Bar upon routine telephonic accommodations, the ACG believes that it would be *nothing short of beneficial* for the Bench to express its views on the topic at a Town Hall Meeting.

The present procedures will continue to be used by the Cleveland judges, respectively.

Adjourning Complex and Time-Intensive Matters to the End of Dockets

On repeated occasions, the Bar made note of its desire to have Judges adjourn matters that, on their face, are more complex and time-intensive to the end of dockets, so that routine matters may be disposed of quickly, thereby allowing attorneys to pursue other matters. The rationale for such request was time and cost savings for debtor and non-debtor clients and estates.

Recognizing that determining whether a matter is “complex and time-intensive” is more of an art and less of a science, and cognizant of the Judges' apparent preference to call cases in a prescribed manner (e.g., alphabetically, by case number, etc.), the ACG has declined to make a formal recommendation with respect to the order in which cases are called on a docket. Given the high degree of emphasis placed upon adjourning more complex and time-intensive matters to the end of dockets—particularly in the chapter 11 context—the ACG nevertheless believes that it would be *nothing short of beneficial* for the Bench to express its views on the topic at a Town Hall Meeting.

CANTON COURT

The ACG recommends that Judge Russ Kendig of the United States Bankruptcy Court for the Northern District of Ohio implement and/or accommodate the following recommendations based on comments from the Bench-Bar Conference.

I. Recommendation: Organization of Hearing Dockets

Organize the hearing dockets in some order, whether it be chronological or reverse chronological order or by alphabetical order based on the debtor's attorney's last name or debtor's last name.

Supporting Rationale: Counsel have difficulty quickly identifying the order in which their cases may be called when reviewing the hearing dockets as they are now organized.

This is an intractable problem. Ultimately, the laws of physics govern all of us and there are no answers, just choices. Choices produce consequences. We have made some choices to attempt to balance consequences. Previous attempts to change the organization of the docket haven't been successful. For example, alphabetical by debtor's counsel doesn't work because the attorney needs time between hearings to work matters out or briefly prepare for the next one. That choice also does nothing for creditors.

There is a publicly available hearing list. It's published on the website and updated continuously and automatically by computer program. It is organized by moving and responding attorney. We are attempting to see if a programming patch can be made so that debtor attorneys will always be able to find their name in one particular place. It appears that should be feasible, but the job isn't done yet so no guarantees.

Even if there was a desired way of doing things, it is questionable whether that could be achieved with the technology that is available. We could go to a more manual system, but that has two problems. First, it would lose the ability to automatically and regularly update the hearing information on the website. Does anyone really want to lose that? Second, a manual system would consume staff time and the staff would not have the time to do other things.

It is possible that people don't understand how matters are currently scheduled on a chapter 13 docket. First, the docket is split up into four categories: motions for relief from stay, motions to modify, other motions and confirmations. All motions of a similar category are heard at the same time. This keeps any one

attorney from being called an inordinate number of times because he or she can only be called for as many matters as they have within each category of motion. On the other hand, if someone only has two matters but one relates to stay relief and the other to confirmation, it's going to be a while.

Within each category of motion the scheduling is driven by two factors: first in time and then grouped by moving attorney. The first motion that is filed in any particular category is the first one scheduled within that category. The second one filed is second and so on, but with one BIG exception. Any motion filed by an attorney that is the moving attorney on a previously filed motion will go into the list immediately after his or her previously scheduled motion if it is within the same category. Thus, moving attorneys will have their motions grouped but responding attorneys will not. This isn't debtor or creditor grouping, because motions for relief from stay will typically be filed by creditor attorneys and the respondent debtor attorneys will be scattered. Other motions will be typically be filed by debtor attorneys so they will be grouped but the creditor attorneys will not be grouped. You can group by moving parties or responding parties, but not both. Alas, the laws of physics govern the courts. We can't have scheduling fulfill competing requirements for time and space.

The choices that have been made involve some contiguous grouping broken up by categories so that you don't get someone with all of their cases at once. Further choices are made based upon the limitations of technology working for us or us working for technology. We can look at a different way of doing things but it has to work its way from the abstract to the concrete. Then it becomes a question of the advantages and disadvantages of any particular change. The choices that have been made attempt to balance maximizing the benefits of using the available technology and grouping hearings, but with limitations to grouping.

II. Recommendation: Telephonic Appearance at Pre-Trial Conferences

Post the Court's policy on its webpage.

Supporting Rationale: Although the Court's policy as to telephonic appearances at pre-trial conferences is contained in its Initial Pretrial and Case Management Order, there are still counsel who are unaware of the policy.

It seems a little bit of a stretch to think that people that don't read the orders that we send them will search the website for the same information, but we can put this information on the website as well.

III. Recommendation: Settlement Notification Procedure

Adopt and post a policy on the Court's webpage endorsing settlement notification by email to the courtroom deputy with courtesy copies being sent to pertinent parties.

Supporting Rationale: Counsel desire a means by which settlements can be reported to the Court with notification to all pertinent parties.

This may require some clarification. I find it hard to believe that people want a less user friendly system. The current system just requires a phone call. This would only be a problem if people are calling off hearings that aren't settled and we haven't heard of such a problem.

IV. Recommendation: Elevator Sign

Clearly post a sign at the entrance to the building, at the security station, and/or at the steps to the basement notifying all of the elevator access.

Supporting Rationale: Some counsel and/or their clients are unaware of the courthouse's elevator and its ability to make the basement accessible to those attending meetings of creditors.

A temporary elevator sign has been installed in the lobby of the courthouse, and GSA has promised to install a permanent sign in the near future. The problem with the elevator is that it actually increases the distance that people have to travel to the 341 meeting rooms. Most of the people with mobility issues have as much or more of a problem with the exertion of distance as they do with the stairs. Sometimes these people get upset when they realize that you sent them a route via elevator that is longer to travel

AKRON, TOLEDO AND YOUNGSTOWN COURTS

The local Bar Associations are addressing any issues that concern the Bar directly with their respective Courts.

EXHIBIT A

FORM FOR DEBTORS WITH SUPPORT OBLIGATIONS

FORM FOR DEBTORS WITH SUPPORT OBLIGATIONS

Date of 341 Meeting: _____

Debtor Name: _____ Case No. _____

Debtor current address and phone no.:

Debtor current employer and address

Full Name(s), current address(es), and phone number(s) of person(s) to whom support of any kind is due:

1. _____

2. _____

3. _____

4. _____

Use back of sheet for additional names and addresses.