

## **FLSB Bankruptcy Lawyers Advisory Committee**

**Meeting: February 21, 2019**

Call to Order: 5:04 p.m.

**Committee Members Present:** Leyza Blanco, Zach Shelomith, Eric Silver, Trustee Robin Weiner, Michael H. Johnson, Jeffrey Fraser, Gerard Kouri, Laila Gonzalez, Nadine White-Boyd, Ashley Dillman Bruce, and Annika Miranda

**Committee Members Absent from Meeting:** Rilyn Carnahan, Heidi Feinman, Ross Hartog, and Robert Furr

### **I. APPROVAL OF MINUTES FROM PRIOR MEETING**

Revision to Prior Meeting Minutes: The Committee approves the minutes from the November meeting with one change - adding Ashley Dillman Bruce's name to the Pretrial Order Committee (Ross Hartog, Rilyn Carnahan, and Annika Miranda).

### **II. SUBCOMMITTEE REPORTS**

Review of Change of Law Firm Procedures: Due to the government shutdown, the government needed to prioritize other items. Jeffrey Fraser will provide an update after Clerk of Court Joe Falzone provides an update from the Court.

Chapter 13 Fee Practice: Michael Johnson sent an e-mail to the group regarding the fee structure in other districts. At a previous meeting, Judge Mark recommended that the Committee provide more information on no-look fees in other districts.

Other no-look fees around the nation are higher than the no-look fee in the Southern District of Florida.

The Committee discussed whether the intention is to request that the Bankruptcy Court for the Southern District of Florida increase the no-look fee or simply to inform the Bankruptcy Court of fees charged around the nation. The intention will be to recommend the change to the Court.

Michael Johnson moved to make a recommendation of a no-look fee of \$4,500.00 and additional fees for certain motions in the Southern District of Florida. Trustee Robin Weiner amends the motion to state that the fees for other motions should stay the same although we are recommending an increased no-look fee of \$4,500.00. The amendment was accepted. No opposition to the motion was presented, so the motion passed unanimously.

Revised Chapter 11 Fee Guidelines: Zach Shelomith joins this subcommittee. The Revised Chapter 11 Fee Guidelines Subcommittee now consists of Nadine White-Boyd, Heidi Feinman, Robert Furr, and Zach Shelomith. This subcommittee will provide a report at the next meeting.

Pretrial Orders Issued in Adversary Proceedings: The subcommittee does not have an update to provide for this meeting.

### III. OLD BUSINESS

Mailing Matrix: This will be kept as a follow-up item on the next meeting's agenda.

Issue of debtor's counsel fees remaining unpaid post-petition: This issue will be tabled until Heidi Feinman is present at the next meeting.

### IV. NEW BUSINESS

- a. Chapter 13 motions and contested matters should be made available for telephonic hearings. A separate part of the calendar could be specified, otherwise those outside the district have to arrange appearance lawyers. It would also facilitate emergency and expedited matters which are not otherwise often set when the trustee is there.

The committee discussed that telephonic appearances are available for matters set on the contested hearing calendar date. There is a question over whether debtor's counsel in a Chapter 13 case can appear by phone on the contested hearing calendar. Gerard Kouri will draft a response to the Chapter 13 attorney who posed this question to the FLSB Bankruptcy Lawyers Advisory Committee.

- b. The current method of calling every chapter 13 case motion at 9 am and then having the Judge come in late in the morning is not productive. If we have a 5 minute motion and it takes all morning we have to pass the cost to the client and the lawyers in these cases are representing often the most vulnerable clients.

Trustee Weiner points out that the Chapter 13 calendars can range from 150-300 cases per confirmation calendar and 250 - 400 cases per motion calendar. The current process of calling cases has been in place for well over 30 years. Several committee members agree that the current system seems to be very efficient. Given that most agree on the efficiency of the current process, committee members then discussed whether our role is to opine as to the propriety of the suggestion and not pass it along to the Bankruptcy Court, or pass it along to the Court with our view on the issue. A committee member suggested that the Committee should assist in filtering which issues should be passed along to the Bankruptcy Court for consideration, and Leyza Blanco indicated that this is consistent with Section 2 of the Bylaws.

Trustee Robin Weiner moved to recommend not changing the current procedure for calling Chapter 13 cases. Both Gerard Kouri and Laila Gonzalez seconded the motion at the same time. No opposition to the motion was presented, so the motion passed unanimously.

- c. The judges are considering elimination of the automatic 180-day prejudice period. There is no statutory support for an automatic prejudice period - there has to be some basis. Thus they are examining all of our form orders to determine when a prejudice period is not necessarily appropriate - for example, just because a chapter 13 plan is not confirmed, is that a reason to dismiss with prejudice? If a chapter 13 debtor voluntarily decides to dismiss his or her chapter 13 case, should that dismissal be with prejudice? The judges wanted to make the LAC aware that they are examining this policy.

Trustee Robin Weiner moved to recommend that the relevant Bankruptcy Code provision be followed and that cases be dismissed with prejudice in certain situations only. Laila Gonzalez seconded the motion. No opposition to the motion was presented, so the motion passed unanimously. Leyza Blanco asked Trustee Weiner to work with Laila Gonzalez and Jeffrey Fraser to draft a proposal with the correct Bankruptcy Code provision so that the Committee can not only review the proposal but also make a recommendation to the Bankruptcy Court in the proper form. This item will be added to the next meeting as a follow-up item.

- d. Limitations on the number of times one can appear pro hac vice in our S.D. Bankruptcy Court is not set forth in our Local Rules. Limits are contained in the S.D. Court's rules which permit no more than 3 pro hac appearances under Rule 4(b)(2). Is this something for the Local Rules Committee to consider adding for the sake of clarity whether it is the same as the S.D. Court Rule 4 or if different or is this a LAC issue.

The Committee suggested that this matter be referred to the Local Rules Committee, so Leyza Blanco will forward the matter to Judge Mora.

NEXT MEETING DATE: MAY 16, 2019

Meeting adjourned at 5:53 p.m.