

LAWYER ADVISORY COMMITTEE
Southern District of Florida

MEETING
March 6, 2020

The meeting commenced at 10:06 a.m.

Present:

Rilyn Carnahan
Ashley Dillman Bruce
Heidi Feinman, *Chair*
Jeffrey Fraser, *Vice-Chair (arrived at 10:30 a.m.)*
Laila Gonzalez (*arrived at 10:38 a.m.*)
Michael Hoffman
Christopher Andrew Jarvinen, *Secretary*
Peter Kelly
Brett Lieberman
Nancy Neidich
John Page

Not Present:

Leyza Blanco, Robert Furr, Michael H. Johnson, and Grace Robson

1. Approval of Minutes

The Lawyers Advisory Committee (“LAC”) approved the minutes of the January 27, 2020 meeting without objection. All minutes of LAC meetings are posted on the LAC website which is linked to the Bankruptcy Court’s webpage.

2. Chair Comments

a. Subcommittee Members-Getting Involved

Prior to the meeting, the Chair circulated to the LAC members a list of the subcommittees and the LAC members who serve thereon. During the meeting, the Chair asked all LAC members to confirm that they are involved in at least one, preferably two, subcommittees. Several of the LAC members volunteered to join additional subcommittees.

b. Subcommittees Reports on a Monthly Basis and Naming a Point Person

The Chair requested each subcommittee to name a point person.

The LAC also discussed the idea of sharing documents in Dropbox (e.g., subcommittee minutes)

so that they can be easily shared and reviewed by LAC members. One of the LAC members indicated that she had experienced issues with Dropbox and offered to speak with the information technology professional in her firm, obtain ideas, and share such ideas with the LAC.

3. Subcommittee Reports

a. Revised Chapter 11 Fee Guidelines

Michael Hoffman offered to serve as the point person for this subcommittee during 2020.

The Chair summarized the status of the work being undertaken by this subcommittee from the minutes of the November 8, 2019 meeting, and the Chair offered to reach out to Robert Furr (a member of the subcommittee) to see whether he has anything to add.

The LAC briefly discussed the subchapter 5 framework that is now in effect (e.g. two such cases had been filed but the section 341 meetings had not yet taken place). The LAC concluded that there are no issues for the LAC to address at this time because the subchapter 5 framework is so new.

The LAC decided to change the focus of this subcommittee from solely fee matters to general chapter 11 matters. The LAC agreed that the new title for this subcommittee will be “Chapter 11 Matters”.

b. Restriction on Changes to Mailing Matrices

Rilyn Carnahan, who serves as the point person for this subcommittee, indicated that she did not have anything to report.

She stated that the mission of this subcommittee for now can be deemed to be “completed”.

c. Dual Contract Issue in Chapter 7 Cases

Rilyn Carnahan serves as the point person for this subcommittee during 2020.

The LAC discussed the dual contract issue which is briefly summarized, as follows:

In a chapter 7 case, (1) the attorney representing a putative chapter 7 debtor either (a) receives, prior to the bankruptcy filing, money from the putative debtor in payment of legal fees and reimbursement of expenses, or (b) takes no money prior to the filing of the bankruptcy case, and (2) the same attorney, after filing the bankruptcy case, enters into a new, or dual, agreement with the chapter 7 debtor to receive payment of attorney fees and reimbursement of expenses during the chapter 7 case. Stated differently, the dual contract issue often deals with the situation where there are both pre- and post-petition contracts covering the payment of legal fees and reimbursement of expenses for the attorney and the post-petition contact could also include an automatic deduction from the chapter 7 debtor’s bank account

to pay for such obligations by the chapter 7 debtor.

The LAC discussed the fact that this issue has not yet arisen in a bankruptcy case pending in the U.S. Bankruptcy Court for the Southern District of Florida. The Chair noted that there was a decision issued by the U.S. Bankruptcy Court for the Middle District of Florida on this issue that the Chair would obtain and share such decision with the LAC.

After discussion, the members of the subcommittee decided that they would formulate a position on the dual contract issue after such issue is formally brought to the attention of the Court. The members of the subcommittee also agreed that, for now, the mission of this subcommittee is deemed to be “completed”.

John Page inquired as to whether it makes sense to ask the Bankruptcy Judges whether they wish the LAC to come up with a proposal or address the issue. The Chair offered, when sending to Judge Isicoff the approved minutes for the LAC meeting held on January 27, 2020, to make such inquiry and report back to the LAC.

d. Peer Review Group

Rilyn Carnahan is the point person for this subcommittee during 2020. She stated that she did not have anything to report.

One of the LAC members mentioned that the purpose of creating a “peer review group” is to provide a means for the bankruptcy bar and the bench to have a means to identify and to help members of the bankruptcy bar who may be experiencing undue stress or substance abuse problems.

Brett Lieberman agreed to raise the issue of the creation of a peer review group at the forthcoming Annual Retreat (“Annual Retreat”) of the Bankruptcy Bar Association of the Southern District of Florida (“BBA”) scheduled for May 15-17, 2020. He offered to announce the possible creation of the peer review group and to solicit individual interest from attendees who wish to discuss the design of such peer review group.

e. No Look Fee Guidelines for Chapter 13 Creditors Attorneys

Jeff Fraser is the point person for this subcommittee during 2020.

He reported that the subcommittee had a phone call a few weeks back, and discussed a few ideas on how to approach the no look fee guidelines for chapter 13 creditors attorneys. He stated that the subcommittee discussed certain limitations in the Bankruptcy Code, the types of plan treatments, and other factors that need to be considered. He also indicated that he has prepared meeting notes, take-aways, and next steps and mentioned that he hopefully would be circulating such notes later that afternoon. Jeff Fraser further stated that he has been taking a look at how a few other jurisdictions are approaching the issue. If the subcommittee ultimately decides to come up with a proposal (i.e. an administrative order, court website guideline, or other), Jeff Fraser mentioned that it can upload whatever is created as a shared document for the shared document

portal planned to be created by the LAC.

The members of the subcommittee indicated that they had not yet discussed items “(i)” through “(iv)” of section “c” (“Adding Items to Chapter 13 ‘ Safe Harbor Fees’ to be Paid Without a Fee Application”) in the “New Business” section of these minutes (please below). Jeff Fraser suggested that the subcommittee would be happy to discuss such issues and report back to the LAC.

The LAC decided to change the focus of this subcommittee solely from just no look fee guidelines to general fee matters in chapter 13 cases. The LAC agreed that the new title for this subcommittee will be “Chapter 13 Fee Matters”.

f. Pro Bono Help Desk and Pledge

Peter Kelly offered to serve as the point person for this subcommittee during 2020.

Peter Kelly stated that the Pro Bono Help Desk been set-up and is running during each of the Chapter 13 calendar dates for bankruptcy cases pending in the Miami-Dade division. He mentioned that it is the goal of the subcommittee to expand the Pro Bono Help Desk to the Broward and Palm Beach divisions. He also stated that he has drafted an article about the Pro Bono Help Desk for the next edition of the Bankruptcy Court’s newsletter. The idea was raised by the LAC to have three members on this subcommittee, one from each of the three divisions.

Brett Lieberman agreed to advertise the Pro Bono Help Desk at the Annual Retreat of the BBA.

4. New Business

a. Publicizing Our Existence

The Chair provided a summary of the meeting that took place during February amongst Judge Isicoff, the Chair, Jeff Fraser and Christopher Andrew Jarvinen. One take away from that meeting is that the community does not know much about the LAC.

Jeff Fraser indicated that he made an announcement of the existence of the LAC during the Chapter 13 calendar in Fort Lauderdale. He then suggested that Nancy Neidich, Peter Kelly and Laila Gonzalez make similar announcements during the Chapter 13 calendar in Miami and West Palm Beach. They agreed to do so.

The LAC discussed the idea of organizing and staffing a table at the Annual Retreat of the BBA. The Chair indicated that she would call Brett Lieberman to speak more about this issue.

The LAC also discussed the idea of distributing an e-flyer at the Annual Retreat of the BBA as well as posting it on the website for the event. Christopher Andrew Jarvinen offered to create an e-flyer. Brett Lieberman indicated that April 1st would be the optimal deadline to have the e-flyer.

b. Document Sharing – Dropbox?

Please see the minutes set forth above regarding this issue.

c. Adding Items to Chapter 13 “Safe Harbor Fees” to Be Paid Without a Fee Application

Please see the minutes set forth above regarding this issue.

The four fees are: (i) Motion to Authorize Sale of Real Property - \$500; (ii) Motion to Authorize the Purchase of a Vehicle or Real Property - \$500; (iii) Motion to Separately Classify - \$500; and (iv) Motion to Extend Automatic Stay (within 30 days of petition date) - \$750.

d. Student Loan Issues (Portal)

This topic has been reserved for discussion at the next meeting of the LAC.

e. Increasing Copy Charges From \$.15 to \$.25

This topic has been reserved for discussion at the next meeting of the LAC.

f. COVID-19: Telephonic Appearances for ALL Hearings Other Than Uncontested Matters in ALL Chapters

Due to COVID-19, the LAC discussed the Chair sending an email to Judge Isicoff to ask the Bankruptcy Judges to consider changing some of the telephonic appearance requirements. The Chair indicated that the Bankruptcy Judges had already begun discussing the issue and are aware of it. The LAC approved the Chair sending such email to Judge Isicoff.

5. Conclusion

The LAC agreed that the next meeting would take place in five to six weeks. The Chair indicated that the subcommittee list would be revised and circulated to the LAC.

The meeting concluded at 11:11 a.m.