

Meeting Minutes – September 23, 2021

USBC Southern District of Florida Lawyer Advisory Committee (LAC) Meeting Agenda

September 23, 2021

11:00 AM EST

(via Zoom)

The meeting commenced at 11:04AM

Committee Members Present:

Jeffrey S. Fraser (Committee Chair)
Peter Kelly (Secretary)
Heidi Feinman
Michael Hoffman
Laila Gonzalez
Rilyn Carnahan
Nancy Neidich

Justin Lefko
Eric Sliver
Greg Grossman
Jacqueline Calderin

Not Present:

Christopher Andrew Jarvinen (Vice-Chair)
Grace Robson
Dana Kaplan
John Page

1. Welcome/Check-In.

- May 26, 2021 – Meeting Minute Approval

The Chair opened the meeting by welcoming members in attendance, described the general purpose of the LAC, and encouraged members to speak openly during the meeting. The minutes from the previous May 26, 2021 Committee meeting were previously distributed to the LAC and approved via email consent. No additional comments or requests for any additional changes were received, and a motion to move to 2nd agenda item was seconded.

2. Chapter 7 Dual Contract/Unbundling of Duties.

Agenda Items:

- *Issue Recap: Whether the Bankruptcy Court should give bankruptcy law practitioners guidance as to the Bankruptcy Court's position with respect to "no-money down" bankruptcies.*
- *Update: Both cases have been resolved, with Judge Isicoff entering opinion allowing the dual contract process (with conditions). This item could probably be moved off agenda on a go-forward.*

The Chair provided a summary of the history of the issue underlying this agenda item as well as prior LAC discussions. The Chair also explained that since the last meeting, Judge Isicoff has issued a memorandum opinion addressing the topic, providing a great deal of clarity. In re Brown, 631 B.R. 77 (Bankr. S. D. Fla. 2021). This issue continues to be a topic at conferences and is likely to be a topic of discussion at the upcoming View From the Bench event. Members explained that the case volume within the scope of the "no money down" space appears to be the same as before, with lawyers that were operating with the "\$0 initial

fee” continuing to advertise and proceed with cases in that structure, but within the overall context that new bankruptcy business is generally slow at this time.

A motion was made to remove this issue from ongoing agenda as resolved as per the perspective of the LAC. No objections were raised and the members present agreed to removal of the agenda item for future meetings. A motion was made to move to the next agenda item was seconded.

3. Mental Health/Attorney Mentoring.

Agenda Items:

- *Issue Recap: The judges have requested that the LAC formulate a sub-committee, procedure, or other idea(s) to address the concern of mental health and/or attorney well-being in our District. The objective is for LAC to serve as a resource for Southern District attorneys that are experiencing difficulties such as mental health, substance abuse, or other conditions that may (and/or has been identified to) have an impact on an attorney’s practice. LAC members have expressed liability concerns connected to initiating contact with attorneys.*
- *Update: a small sub-committee has been formed (Jeff Fraser, Christopher Andrew Jarvinen, Nancy Neidich). Our next steps are to flesh out the discussion as to how, if, and whether appropriate for LAC members to initiate contact, and research local organizations or other resources that are publicly available in this space. Perhaps the end result is the LAC serving as a resource for other resources, where impacted attorneys could reach out and LAC can either assist or point in right direction.*

A recap was provided for this topic, explaining that this is an issue of concern of the courts and that a subcommittee of the LAC has formed & discussed the topic. The subcommittee’s work has included discussion of the concern that exists among attorneys, who generally are not trained professionally in handling mental health issues or counseling, regarding getting themselves involved with this type of situation with another practitioner, when it may be better for someone with formal training to get involved. The subcommittee is researching resources (ABA, state-level bar associations, etc.), considering issues and concerns, and is open to suggestions. It was emphasized that there is a real discomfort among attorneys in terms of direct involvement with assisting another attorney who is dealing with mental health issues (re: ability/inability to help, liability concerns, etc.), as well as a general stigma as to certain resources such as involving the Florida bar with respect to a colleague practitioner. The subcommittee will schedule new meeting date within the next few weeks for further discussion.

A motion was made to move to next agenda topic and the motion was seconded.

4. Chapter 13 Sub-Committee Report.

Agenda Items:

- *Issue Recap: “No-Look” (or “Presumed Reasonable”) attorney fees for secured creditors in Chapter 13.*
- *Update: The Chapter 13 sub-committee met earlier in year, and at that time, it was determined that (for now) it will not present a “No-Look” secured creditor attorney fee proposal. The issue is back on the table and the sub-committee is circulating a draft proposal.*

The Chair and subcommittee members explained that the main topic of recent discussion for the subcommittee has been the idea of no-look Chapter 13 fees, what a proposal would look like and whether it is a viable project at this time, or whether more disputes in cases are needed before a proposal is ripe in the Southern District. Members noted that several Southern District cases have involved judicial determination on this topic recently (predominantly within the Palm Beach Division). It was also noted that other jurisdictions outside of the Southern District have established procedures for this, which is perceived as helpful in eliminating certain litigation that often involves relatively low amounts in controversy. Issues exist regarding what specific actions would fall within the scope of any proposal (i.e. whether fees should or should not be recoverable for preparing and filing a proof of claim under varying factual conditions, etc.). Subcommittee members will reach out to practitioners who are directly involved with active or recent disputes on these fee issues to get more details. The subcommittee will continue

discussion, and some members noted there is motivation to move quickly because there appears to be a division forming between different local Judges and their positions regarding these types of fees.

An additional topic was raised regarding a potential monitoring fee for the post-confirmation term of Chapter 13 case, for review post-confirmation filings, notices of payment changes, and other additional work post-plan confirmation. It was noted that in the Middle District of Florida a \$50 / per month post-confirmation “monitoring” fee is permitted. The discussion also addressed the history of the existing safe harbor fees being enacted, that the existing “no-look” fees provisions for Debtor counsel were determined with consideration of the post-confirmation work as included in the safe harbors when they were initially approved (and incorporated in the Rights & Responsibilities documentation), such that a fee application should be utilized for the cases where additional work needed. No resolution was reached with respect to this topic and Members agreed that this topic will be discussed further in the next subcommittee meeting.

A motion to move to the next agenda item was then seconded and approved.

5. Meet the LAC Zoom Conferences.

Agenda Items:

- *Issue Recap: Last year, the LAC conducted “Meet the LAC” Zoom conferences so that Southern District of Florida lawyers had the opportunity to meet our members, and for us to notify them that LAC is here to act as a conduit between the lawyers and the bankruptcy judges in South Florida.*
- *Update: Business BK/Ch7 “Meet the LAC” Zoom conference occurred August 30, where LAC members discussed LAC’s role in our District. The lawyers present inquired about the continuation of virtual hearings. We will look to schedule Consumer Meet the LAC later this year.*

The Chair explained the recent conference and that that with respect to the continuation of virtual hearings item raised therein, an update is not yet been made available from the Judges. The Chair explained that when the LAC update regarding mental health topics is provided to the Judges, the Chair will inquire regarding status of virtual hearings.

6. Local Rule or Administrative Order suggestions (agenda item identified from Greg Grossman):

Agenda Items:

- *Issue #1 Recap – Document Productions under Rule 2004 & Rule 7030: LAC member Greg Grossman identified whether it may be worth discussing the procedures of document productions for Rule 2004 Examinations and Rule 30 non-party depositions in our District in terms of timing and free-standing document requests. As to timing, right now there does not appear to be a method to require an examinee or a deponent who is not a party (where Rule 7034 could be used to obtain documents in advance of deposition) to produce documents prior to the deposition (as having documents available in advance for review would make the deposition more cost-efficient, useful and productive). The local rules, local forms, and forms of subpoenas do not, for instance, allow the designation of two different dates (one for production of documents and one for the oral testimony). Grossman believes that many practitioners resort to workarounds including non-uniform notices of Rule 2004 examinations to achieve such results. As to free-standing document requests, where there is an adversary or contested matter, the current rules seem perfectly adequate to handle the needs (Rule 7034 can be used to get documents from a party and Rule 45 and the current form of subpoena permits checking a box asking only for documents from a non-party). However, when a party in interest in the main case seeks documents but not testimony a Rule 2004 Examination notice is an ill-fit in terms of the forms. For example, a Rule 2004 Examination that seeks documents but not testimony from a debtor should be available in an easy process.*
- *Issue #2 Recap – Contingency Fee Arrangements: Rule 4-1.5(f) of the Florida Bar Rules and Regulations [“Contingent Fees”] pertaining to contingency fees requires a writing, signed by the lawyer and client, stating the method by which the fee is calculated, and indicate whether costs are included or not. Grossman suggested that it appears as if contingency or hybrid fee agreements in our District are common (e.g. in preference litigation by trustee’s counsel or D&O lawsuits) and are being approved without compliance with 4-1.5(f) relying instead solely*

upon a motion or application filed under Section 328 and the order thereon. Grossman notes that our local rules require compliance with the Rules Regulating the Florida Bar.

An update was provided that the issues within this Agenda item—namely the possible revisions to document production procedures and the topic of compliance for contingency fee arrangements – are also pending review and comment from Judges.

7. Pro-Bono Update (Peter Kelly).

Agenda Items:

- *Issue: Peter Kelly to provide an update on pro-bono projects currently underway with our District's pro-bono committee.*
- *Update: [CAJ Comment: Does this warrant an "update" line?]*

Peter Kelly provided an update regarding present pro bono topics and projects. Any Members or their colleague attorneys who are interested in mentoring law students should please contact him to get involved, as there is always a need for more mentorship for law students and with multiple law school bankruptcy clinics. A subcommittee of the Southern District Bankruptcy Pro Bono Committee has taken on the task of reviewing and revising the Court's website with respect to pro bono information, and if anyone has any suggestions or comments for updates or revisions to the website they are encouraged to provide them. Work is also ongoing regarding how to provide virtual / remote access to pro se parties to the Pro Se Helpdesk program, with the latest direction being to possibly integrate the program into the Zoom.gov video hearing platform to try to utilize the breakout rooms within the Zoom format. Anyone interested in contributing suggestions regarding these projects or getting involved as a volunteer can email Peter Kelly at pkelly@pwkpa.com.

A motion to adjourn the meeting was made, seconded, and approved.

Whereupon the meeting concluded at 11:42AM.