

USBC Southern District of Florida Lawyer Advisory Committee (LAC) Meeting Minutes (2-10-2021)

February 10, 2021

4:00pm EST

(via Zoom)

Present:

Jeffrey S. Fraser (Committee Chair)

Christopher Andrew Jarvinen (Vice-Chair)

Peter Kelly (Secretary)

Heidi Feinman

Michael Hoffman

John Page

Laila Gonzalez

Rilyn Carnahan

Nancy Neidich

Justin Lefko

Dana Kaplan

Eric Sliver

Greg Grossman

Jacqueline Calderin

Not Present

Grace Robson

1. Welcome/Check-In; Approval of Prior Meeting Minutes

Chair welcomed the new Members of the LAC and provided a brief overview of the committee and its ongoing projects. The circulated minutes for the December 14, 2020 meeting were discussed and no changes were proposed. A motion to approve the minutes was seconded and the minutes for the December 14, 2020 meeting were approved.

2. Chapter 7 Dual Contract/Unbundling of Duties

Agenda Items:

- a. 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.*
- b. Update: At the Judges/LAC meeting on 12-14-2020, it was suggested that in the absence of a ruling by the Court on a particular case, a local rule or an administrative order would be helpful to lawyers in this district. The judges indicated that this topic is on the agenda for their upcoming judicial meeting, and they will report back to the LAC at some point after that meeting.*

Chair explained that the Judges are aware of and continue to consider this issue. Members mentioned that the Office of the US Trustee has now filed motions before Judge Isicoff in two separate cases (20-23354-LMI & 20-18268-LMI) involving different firms/parties. Members commented that the practice at issue remains of high concern/interest among practitioners and that commercials appear to still be airing on media such as television, etc. even after the U. S. Trustee motions were filed.

3. Court Call/Court Solutions/Zoom Hearing

Agenda Items:

- a. Issue Recap: As a result of COVID-19, our district (as well as most regions in the country) has been forced to adjust Court procedures and hearing options. The LAC agreed that a sub-committee should be formed to discuss options for expanding virtual hearings and other procedures/strategies to promote efficiency (depending on hearing calendar type).*

- b. Update: At the Judges/LAC meeting, there was discussion about expanding Zoom hearings for Chapter 7/11 calendars. Judges have researched the tech and integration. This item is on the agenda in case the sub-committee wanted to add any further thoughts.*

Chair provided updates regarding ongoing topics relating to virtual hearings, procedures and platforms. This included the ability to expand the use of Zoom and possibly other technologies to adjust and improve virtual hearings. Members discussed the potential for utilizing Zoom for 341 meetings. It was also noted that Judge Kimball may begin utilizing Zoom for all of his hearings, potentially beginning as early as March 2021. This is purported to be for hearings in all case chapters on Judge Kimball's cases, which will implicate the Court's self-calendaring system within CM/ECF. Judge Kimball's page on the Court's website is to include instructions for this new process once available. Some Members indicated that other courts in other districts have begun using Zoom more frequently. Inquiry was made as to whether Zoom was to be utilized for 341 meetings in Chapter 13 cases, and it was agreed that the Chair will follow up w/ Joe Falzone and the Clerk's Office about this. It was also discussed that the bankruptcy court system is likely to continue with use & development of virtual hearing processes for the foreseeable future.

4. Attorney Conduct/Civility

Agenda Items:

- a. Issue: it has been brought to the LAC's attention that there have been instances of attorney incivility during telephonic proceedings (specifically 341 meetings)*
- i. The issue was briefly brought up at Judges/LAC meeting, and the judges advised that 341 issues should be brought to the UST and if specific misconduct is brought to the LAC, it should be directed to the SD's committee program.*
 - ii. Heidi Feinman suggested an article on attorney conduct in the Beacon.*

An update was provided regarding the possibility of an article in the Courthouse Beacon News publication that would address attorney civility and conduct. Heidi Feinman has been in communications with Tom Messana who has expressed willingness to submit an article commenting on civility and behavior, which is intended to serve as a basic reminder to attorneys practicing before the Court. There is no set deadline for the article.

Members of the LAC discussed keeping this general item on the agenda going forward for ongoing discussion as it would appear the LAC would appear to benefit from knowing where to direct concerned parties that approach the LAC with these issues. After receiving guidance from Judges that this is not the LAC's role to dig into these issues, some uncertainty remains as to where / what program(s) any concerned practitioners should be directed in the future. Members also discussed placing links onto the Court / LAC website once the LAC can specify where they should be directed. Discussion included concerns as to whether the District Court committee remains active and determining proper contacts, as well as differences between the separate topics of attorney incivility vs. attorney substance abuse/mental health concerns. Members agreed the general topic of to where the LAC should refer practitioners with these concerns will be kept on agenda for discussion next month to see if more detail regarding proper committees or resources can be determined.

5. Chapter 13 Sub-Committee Report

Agenda Items:

- a. "No-Look" (or "Presumed Reasonable") Attorney Fees for Secured Creditors in Chapter 13*
- b. Motions to Modify/Modified Plan Attorney Fees*
- c. Local Form 48 – Debtor's Response to Rule 3002.1 Notice*
- d. Chapter 13 Hearings/Calendars (ideas to refine process during COVID)*
- e. Possible updates to Local Chapter 13 Plan Form (last revision, 2017)*

Chair and Sub-Committee Members provided an update on topics generally, including the positive time-saving results from removal of name-spelling requirements on certain Chapter 13 trustee calendars, and ongoing discussions of no-look creditor attorney fees. Members also discussed the specifics of the Local Form 48 relating to Rule 3002.1 notices, and minor adjustments

that may be beneficial, including language confusion/vagueness, the Debtor signature requirement, whether a separate objection would also be needed in addition to the filing of this form, and related calendaring issues. This form will be discussed with the Sub-Committee going forward, along with the other pending items.

6. Meet your LAC Zoom Conferences for 2021?

Chair explained that the Clerk has inquired as to whether the virtual “Meet Your LAC” conference meetings will be conducted again in 2021. Members explained these meetings were conducted in multiple groups to try to cover different bankruptcy practice areas, and that they were very well received by practitioners last year. The meetings also appeared to be successful in terms of spreading the word about LAC and introducing respective Members. Most if not all Members supported idea that present timing appears good to conduct another round of these meetings—the last round of meetings was during the beginning of the COVID pandemic, and now the meetings will present an opportunity to touch base with attendees now that we are 12 months along in practice through the pandemic. Members indicated they would be willing to assist with them, and the Chair will correspond with the Clerk about moving them forward.

7. Board Elections

The Members conducted an election for the positions of Chair, Vice Chair, and Secretary for the year forward. Members nominated Jeffrey Fraser for the position of Chair, which nomination was seconded and approved by a majority present. Members nominated Christopher Jarvinen for the position of Vice Chair, which nomination was seconded and approved by a majority present. Members nominated Peter Kelly for the position of Secretary, which nomination was seconded and approved by a majority present. Other than the specific Members noted above, no other individuals volunteered for or were nominated for any of the above-described positions.

Chair explained he will circulate timing for scheduling of the next regular committee meeting, which will likely occur in April 2021.

A Motion was made to adjourn the meeting, which was seconded and approved. Whereupon the meeting concluded at approximately 4:57PM.