

LAWYER ADVISORY COMMITTEE
Southern District of Florida

MEETING

April 21, 2020 – Via Zoom video conference

The meeting commenced at approximately 11:03AM.

Members Present:

Heidi Feinman, *Chair*
Leyza Blanco
Nancy Neidich
Ashley Dillman Bruce
Robert Furr
Michael Hoffman
John Page
Michael Johnson
Rilyn Carnahan
Jeffrey Fraser, *Vice Chair*
Grace Robson
Laila Gonzalez
Brett Lieberman
Peter Kelly

Not Present:

Christopher Jarvinen, *Secretary*

1. APPROVAL OF PRIOR MINUTES

Minutes from the prior March 3, 2020 Lawyers Advisory Committee (“LAC”) meeting were previously approved online via email communications.

2. MINUTES FOR TODAY’S MEETING

Peter Kelly agreed to take minutes/notes as Christopher Jarvinen was not able to attend the meeting today.

3. CHAIR COMMENTS / CHECKING IN

Heidi led a discussion checking in with everyone on the call, to see how everyone has been doing under all of the recent circumstances and changes surrounding the global health situation/pandemic, and to make sure everyone doing ok. Comments below:

Nancy Neidich - Explained she loves not having to drive downtown, but has been finding it extremely difficult to conduct chapter 13 calendars via phone. She has experienced logistical issues with noise / participants not muting phones properly, as well as not being sure who is

appearing on which case. She noted she has been continuing most motions filed by her office. Other than reduced traffic time on the road she is looking forward to conducting her calendars in person again. She has reduced the hours/days of her office and has also adjusted her pre-hearing communications timing.

Robert Furr – Spoke highly about the Bankruptcy Court focusing on technology and adapting to the virtual / remote working world. His office has also been effective in converting to remote operations. He has a number of telephonic 341 calendars coming up soon.

John Page – Agrees that the Bankruptcy Court has done a great job, and that Courtcall has been seamless. He explained he believed Judge Mora held an evidentiary hearing recently by Zoom video conference and would like to know more detail about that process. Has noted he has observed depositions have not been scheduled with as much frequency recently.

Ashley Dillman Bruce – Explained that other than interruptions of speaking over each other, courtcall has been fine for her needs. She mentioned she has been attending hearings conducted via Zoom in state court proceedings and was curious if other members had been doing so.

Leyza Blanco – Explained she is doing well and discussed a recent hearing with Judge Mark, where it was discussed that a future hearing may be conducted via Zoom meeting. She has attended extended Zoom hearings in state court recently. Her practice is working remotely and operating effectively, they have been pretty busy.

Brett Lieberman – Explained he is doing well and learning Zoom etiquette. His firm is operating remotely, and anticipates a bankruptcy avalanche will be coming at some point. He likes seeing people in person via Zoom and commented it is important for us/people to see each other.

Laila Gonzalez – She is the only person going in to her office. She just attended 341 meetings by phone, and they went surprisingly well. She praised Nancy Neidich with operating the chapter 13 calendars, and has attended some proceedings in Middle District / Ft. Myers remotely that have been effective as well.

Michael Hoffman – His firm has gone exclusively remote and is functioning well. He is busy in general. Telephonic hearings have all gone well on both courtcall & court-solutions platforms; he has noticed calendars taking longer than in the past due to multiple factors including judges not taking agreed matters at the beginning of the calendars. He suggested possibly expanding the negative-notice procedures for the time being to help streamline hearing calendars. He participated in a Zoom deposition recently conducted by Brett Lieberman which he explained went well.

Peter Kelly – Has been working with both Court Solutions and Courtcall platforms to help with access for law student clinics and stated that Court Solutions seems to have advantage in terms of accessing free services / fee waivers for educational & pro bono use, as well as with features available for participants (seeing the parties on the line, ability to “raise hands” etc.). He explained a hotline number has been set up through Legal Aid in Miami so that pro bono case intake and other assistance can continue to operate remotely, and that he has been

communicating with Steve Newburg regarding other means for pro bono assistance. He agreed that it is beneficial to see each other as everyone is dealing with the present situation in different ways.

Michel Johnson – Seconded the idea of expanding negative notice options for motions, especially in the chapter 13 world. He explained there are a number of matters that are uncontested on every calendar, and that negative notice might assist in reducing calendar times for certain items. He explained he operates a solo practice and is going in to his office to be able to work more effectively there than he can at home.

Grace Robson – Explained that she goes in to her office once a week or so, and coordinates with other colleagues in her office to schedule who is in the office at what times. Some colleagues have certain requirements where they must be present in the office at certain times. She explained she prefers courtcall among the platforms for phone hearings, which have all gone well generally. She also noted all parties are generally working well together to accommodate items like extending deadlines in cases, etc.

Heidi Feinman – Heidi explained her home has gone through some adjustments in terms of tables/areas taken over with home-office equipment, and that she needed to upgrade items like her office chair due to the time spent in front of her computer these days (several other attendees shared comments of agreement with this). She has found it pleasant not to travel as much as she did previously, and that working at home has brought some benefits such as spending more time with her dogs.

Jeff Fraser – Hearings have been going smoothly so far from his perspective. He has been working exclusively remotely since mid-2019, so has not experienced much adjustment other than having to conduct all hearings by telephone. He has found it helpful because his firm works in multiple districts and states and all bankruptcy courts in which he works have been conducting everything by phone. He noted that calendars so far have been improving as people get more practice with the etiquette and how to participate. RE: negative notice motions, he believes there is a local rule that restricted their filing in chapter 13 matters, but that in the present climate it could be a good improvement to expand them.

Regarding the negative notice topic, Nancy Neidich commented that certain motions such as motions to modify chapter 13 plans were a disaster when they were previously conducted through the negative notice process, and believes that many motions such as motions for stay relief on negative notice are a disservice to the Debtor. She observes that debtors and creditors are more actively resolving things ahead of time these days and has seen that as an improvement in the present climate with a positive effect on the hearing calendar process/time. Laila Gonzalez supported Nancy's position that the negative notice matters should not be expanded.

Rilyn Carnahan – Rilyn explained she has some logistical challenges with her office and the Zoom platform so has experienced a little bit of difficulty with video connectivity. She acknowledged hearing of / observing issues with both the courtcall and court solutions platforms (i.e. issues of calls dropping, or courts not being able to hear parties properly, etc.), and noted the challenges of a lengthy call in situations where a matter is pushed to the back of a calendar. She

is getting accustomed to working from home and for the most part things are going well. She stated Melinda Hayes participated in the recent Zoom evidentiary hearing before Judge Mora and Melinda had indicated that the process went well.

Heidi Feinman thanked everyone for sharing their experiences and explained it is helpful for her and the Courts to hear how everyone is doing.

Heidi explained that items 4, 5 & 6 on the prepared meeting agenda involved questions from Judge Isicoff.

4. DUAL CONTRACT ISSUE / UNBUNDLING ISSUE IN CHAPTER 7 CASES

Issue generally described as: whether it is proper/permissible for a debtor to enter into a pre-petition contract for debtor representation and immediately upon the filing of the case, the debtor attorney enters into a new, post-petition contract for representation of the debtor.

Heidi stated attorney Chris Olson had filed a motions relating to the issue before Judge Mora [David Lee Effenson case] and before Judge Kimball [Phil Walls case], and resulting Orders were circulated with the meeting agenda. Regarding the Judge Mora case, the subject motion involved asking for fees post-petition on a pre-petition contract.

Heidi explained that Judge Isicoff asked her if the LAC was proposing to have the bench issue an administrative order regarding the dual contracts, and opened the discussion to the group.

Laila Gonzalez stated she believes the local rule is clear that we cannot unbundle services here in the FLSB, so an AO is not needed.

Michael Johnson favored issuance of an administrative order and suggested it would be very helpful & needed. He indicated that he understood the cases/motions filed recently were to try to get an opinion from the Judges as to whether the practice is acceptable, and believes the bar/practitioners need clarity as there is some directive going both ways on the issue in different districts / courts / etc. He explained he is aware of decisions/courts permitting this behavior and others not permitting it (and penalizing the debtor attorney in some instances). He personally does not want to take any action that risks his license and believes getting clarity is important. Inquiries were raised by Brett, Nancy, Laila about the recent Orders; Michael Johnson explained people are doing a skeleton filing and then adjusting.

John Page explained that it is a financial accommodation that is being provided.

Robert Furr stated he believes the situation will ultimately work out into a future resolution that will allow this process, but indicated that he personally/presently does not want a case in which he can't be paid up front). He explained that an Admin. Order would likely be helpful for practitioners.

Nancy & Michael Johnson – discussed filing chapter 13s as an alternative (and potentially convert to 7 once fees paid). A general discussion of the importance of conducting due diligence prior to filing even a skeleton case ensued. Robert Furr explained that some/many ch7

trustees resent fee-only chapter 13s and believe they are not proper. Nancy brought up the issue that these cases are likely to be no-asset cases if they were a ch7, as they involve debtors that don't have the ability to pay for representation.

Michael Hoffman & Michael Johnson explained it appears to be just one firm that is doing the bulk of this practice / the unbundling work. M. Hoffman suggested that firm may need to bring the issue up to the court for ruling(s) rather than recommending an administrative order be entered.

Robert Furr commented that ch7 work has become much more difficult over the past years (previously it would take several hours to work up schedules, and that is not possible any longer—much more time is necessary today).

Heidi Feinman reiterated that Judge Isicoff wants to know if we recommend an AO be entered, and if so, what should it state?

Michael Johnson suggested that maybe the issue could be opened up to practitioners to contribute input. He said Judge Williamson's Order from the FLMB and the recent Palm Beach orders from Judges Mora and Kimball differ in terms of describing what is required / permitted.

Heidi Feinman proposed opening up discussion through some format, such as brownbag lunches, to have some opportunity to receive feedback from practitioners generally. Leyza Blanco explained another forum might be the Judicial Liaison Meeting (which includes Judge Williamson as well as many judges from here in the FLSB). Leyza explained the next Judicial Liaison Meeting is scheduled in June.

Michael Johnson explained Administrative Orders exist already in certain courts/districts, including Utah, West Virginia, Arizona, Mississippi, and Northern Kentucky. He stated some allow the practice and some do not, and that while we have a local rule that addresses unbundling we don't know the full details as to whether similar rules exist in other districts which may affect the decisions they have made.

Heidi Feinman suggested that because there are splits in existing rulings / orders / etc. on this, it may not be possible for the LAC to come to a consensus and recommend one way or the other on this issue to the Judges. Leyza Blanco explained this is consistent with feedback from the judges regarding prior LAC discussions on this topic. The possibility was discussed of recommending the courts to issue an AO but not indicate which way the AO should go on the issue.

Laila Gonzalez indicated she believes this practice at issue is not acceptable/permissible and an Administrative Order should go in that direction. Other parties voiced agreement. Robert Furr raised some hypotheticals which were discussed generally.

Ultimately a general consensus was reached that a formal recommendation could not be made at this time.

5. PIER REVIEW GROUP

Heidi Feinman explained that Judge Isicoff is very concerned about this topic and would like to create some sort of peer review group to help with attorneys who are experiencing mental health / dependency issues. Heidi believes this is especially important in the present environment of remote work / isolation. Judge Mora is involved with this project, and Heidi spoke with Rilyn Carnahan about the issue who stepped in and conducted some work on the project.

Rylin provided an update: she is also on the BBA board and the BBA has discussed this topic in as potentially a project that is more appropriate for the BBA to deal with than the LAC. The most recent BBA meeting was completed and established a separate pier review committee, the members of which are the directors of each division. She has a call coming up with Steve Newburg regarding the next steps. Per Heidi, Judge Mora is happy to be involved with the project but Heidi does not believe she wants to take over—there are concerns from the Bench about having Judges come out and speak with an attorney because of potential issues of perception of bias, but that Judge Mora / other Judges are happy to be involved behind the scenes.

Rylin Carnahan explained she will reach out to some individuals who had previously volunteered to present at the BBA Retreat (which will not be going forward unfortunately), to see if these volunteers are interested in putting something together as a presentation on how we can assist with reaching out to attorneys who may have issues. She acknowledged that we as lawyers are not experts with treating/counseling someone who may have issues, and people may have reservations with giving advice.

Leyza Blanco explained she is happy to help. Brett Lieberman explained that the BBA committee is looking to set up next steps for how to implement some action. Brett and Rilyn agreed that because the BBA has set up its own separate committee, this topic can be removed from this LAC committee's list of items/projects.

6. NO LOOK FEE GUIDELINES IN CHAPTER 13

Heidi Feinman explained that Judge Isicoff asked if the LAC is looking to formally request any changes to the court's guidelines / rules on no-look fees.

Jeffrey Fraser explained he does not believe we are making a formal proposal at this time. He explained the subcommittee wasn't able to meet again yet to discuss these ch13 fee issues due to the recent pandemic issues. He explained he sent out some information to the subcommittee regarding an FLMB court meeting that was to convene to discuss these issues in that district, but that the FLMB meeting was cancelled due to virus closures /etc. He wants to reconvene the subcommittee in order to continue the ongoing discussions.

Nancy Neidich, Laila Gonzalez and Peter Kelly agreed that more time is needed before anything can be recommended as a proposal. Laila commented on the distinction between Debtor and Creditor-side fees in some portions of the items being discussed by the subcommittee. It was agreed that there is no formal recommendation to be made on this issue at this time.

7. COVID FORBEARANCE AGREEMENTS

Jeffrey Fraser updated the group that he is working with courts & trustees in the FLMB regarding forbearance agreements initiated by lenders to give debtors a temporary break during the virus pandemic. Judges have raised issues with whether lenders have contacted Debtors / solicited the communications that might raise stay violation issues. There is a proposed adjustment to procedures/rules in the FLMB to provide that such communications would not be deemed a stay violation. Jeff inquired as to what everyone might think about this here in FLSB.

Nancy Neidich explained that if she receives funds she needs to disburse them unless there is something controlling her otherwise (like a modified plan). She raised issues with whether / what notice is required in an active bankruptcy case, and was curious as to whether these agreements are uniform or have variety between them. Nancy believes they raise a whole host of issues and indicated she has some concerns about the effect of the agreements on cases, such as a debtor that cannot bring a mortgage current / catch up on payments after a forbearance of several months. She also indicated she has been fielding many inquiries from Debtors on late payments etc. (and working to see how everything shakes out). She explained she may / is holding off from notices of delinquency for the time being in her cases.

Laila Gonzalez brought up the CARES Act provisions permitting a 7 year modified plan as something that may help debtors address concerns regarding negative effects of a forbearance agreement.

Peter Kelly commented that it is important to be discussing this issue and to try to develop a consensus among debtor/creditor/trustee/court positions as to procedures for addressing these agreements, as they are likely to involve a high volume of cases (similar to what we experienced with high-volume filing of notices of payment change / post-petition fees by institutional creditors following Rule changes several years back). It seems to be in everyone's best interest to stay out ahead of volume filing if possible so that they can be effective and not overly burdensome on any particular party.

Members agreed that it is an important issue, and Jeff Fraser explained he is working on another committee to try to gather more info and develop a consensus. He will plan to update the LAC.

8. STUDENT LOAN ISSUES (PORTAL)

Laila Gonzalez posed this issue for discussion and believes that we should utilize a portal for student loan mediation similar to what is used for the MMM Mortgage modification mediation program. She explained that issues have arisen regarding how / whether possible to force government entities involved with the student loans at issue to utilize a portal / otherwise participate in a formal program. She explained that to her knowledge the FLMB has experienced some issues in this regard. She explained there are also issues relating to stay relief and other angles that need to be sorted out.

Nancy Neidich explained she is involved with a task group that was put together by Judge Mark (also participating are Robin Weiner, Mitch Nowack, John Eaton, Michael Hoffman, and some others). That group has not met recently. Michael Hoffman explained he believes Judge Mark was waiting on some guidance re: government involvement. Previously it had been anticipated

that a formal program in the FLSB would roll out in late Spring of this year, but this has been on hold.

Nancy acknowledged issues that are causing sticking points in the FLMB program. Nancy will speak with the participants of Judge Mark's group and will try to get an update for the LAC.

9. INCREASING COPY CHARGES FROM \$0.15 to \$0.25

Laila Gonzalez explained the authorized copy charge amount has not been changed in a long time, and she proposed to increase the allowed charge from \$0.15 to \$0.25 per page. Grace Robson supported the change proposed by Laila. Nancy Neidich indicated she is neutral. Leyza Blanco explained she also supports the proposed change. Multiple parties also supported the change, and it was agreed that this change would be recommended by the LAC.

10. PUBLICIZING THE LAWYER ADVISORY COMMITTEE

Heidi Feinman explained that Judge Isicoff is concerned that the bar doesn't know the LAC exists. Heidi is working on a flyer with Christopher Jarvinen and will touch base with him to move that project forward.

Brett Lieberman explained that the BBA is rolling out a new website, which will include more marketing for the LAC. He stated the BBA can include the flyer as well as other information on the site.

Leyza Blanco proposed having more interactive availability (maybe through Zoom meetings) to allow for more access among the bar community at large. Laila Gonzalez suggested combining that with the topic of unbundling ch7 fees issue. Heidi Feinman suggested trying out interactive sessions / calls / meetings every 3 weeks or so, to see if it is effective / what happens with it. Leyza will put together a schedule and send around a Zoom invite for people to attend. A general discussion ensued where 3 or 4 people from the LAC would be present on the call/meeting, including someone on the call to take the notes, and Heidi explained it should be scheduled far enough in advance so that people are aware and can register in advance.

Heidi will reach out to Joe Falzone regarding how to promote these calls.

Ashley Dillman Bruce suggested that the calls maybe would benefit by being set up for different categories (i.e. a call re: ch13 topics vs. call ch11 topics, etc., plus a general topics call). Leyza Blanco requested LAC members contact her regarding which calls they would like to help with as well to coordinate scheduling/availability.

11. CONCLUSION

LAC Attendees all agreed that it was good to see each others' faces via the Zoom meeting platform, which was preferable to a listen-only phone conference.

Meeting adjourned at approximately 12:38PM.