

Southern District of Florida Bankruptcy Court - Lawyer Advisory Committee (LAC) - Meeting Minutes

Meeting - October 7, 2020

Start Time - 2:05pm EST (via Zoom)
End Time - 3:15pm EST

Committee Members Present:

Jeffrey S. Fraser (Committee Chair)
Christopher Andrew Jarvinen (Vice-Chair)
Peter Kelly (Secretary)
Michael Hoffman
Michael Johnson
John Page
Laila Gonzalez
Rilyn Carnahan

Nancy Neidich
Robert Furr
Ashley Dillman Bruce
Brett Lieberman
Leyza Blanco

Members not present:

Heidi Feinman
Grace Robson

1. Welcome/Check-In & Approval of June 19, 2020 Meeting Minutes

Lawyers Advisory Committee ("LAC") members greeted each other and briefly discussed the timing of the last meeting, upcoming meeting in December, and recent changes to Committee Chair and other positions. The minutes of the June 19, 2020 meeting were approved without objection. All LAC meeting minutes are posted on the LAC website which is linked to the Bankruptcy Court's webpage.

2. Chapter 7 Dual Contract Issue/Unbundling of Duties

Committee Chair summarized the issue and prior meeting discussions, and explained the issue has been raised to Judge Isicoff's attention to discuss with the Judges as an issue of concern, but without a directive/recommendation from the LAC in one direction or another. Chair inquired as to whether any new positions / information was available. It was explained that entities now appear to be advertising for these services (no money down chapter 7 filings) in prominent forums (television, facebook advertisements), which raises curiosity as to how much money such companies are making from this practice. The issue continues to gain attention among practitioners. The LAC agreed this topic will remain on the LAC meeting agenda, including the upcoming judicial meeting, but there is no further action to take at this time.

3. COVID-19: Forbearance Agreements

Chair explained that proposed language prepared by Subcommittee and approved by LAC Committee was previously provided to Judge Isicoff, with the aim to provide clarity to parties with respect to stay concerns and other issues regarding forbearance agreements and related procedures. Judge Isicoff recently entered a corresponding Administrative Order that incorporated a large portion of the proposed language. (*Administrative Order 2020-11, In re: (I) Modifications of the Automatic Stay to Facilitate Forbearance Agreements During COVID-19 and (II) Amendments and Modifications of Chapter 13 Plans to Accommodate Forbearance Agreements*, entered Aug. 20, 2020). LAC Members discussed that lenders continue to extend these agreements, that the timeframe for their relevancy has

already extended beyond where many had anticipated, and that it appears these agreements will continue to be offered / active for the foreseeable future.

4. Consumer/Chapter 13 Sub-Committee Report

Subcommittee provided an update on recent subcommittee meeting discussion and pending agenda topics, including evaluation of potential for presumptively reasonable safe harbor fees for certain common secured creditor actions, increase of safe harbor fee for Motions to Modify Plan (other district(s) & NACTT conference discussion indicating \$1,000 is reasonable, as opposed to \$500 local safe harbor fee). Subcommittee members are working to find more information & structures from other jurisdictions and are exploring language & terms for possible proposal. LAC agreed to keep these items as agenda topics within the subcommittee for the time being as subcommittee discussions & research remain ongoing. Subcommittee to provide further report / status at next meeting. Additional topic of the specific nature of chapter 13 hearing calendars (case volume, overall length of time, number of participants)

5. Court Call/Court Solutions/Zoom Hearing

Committee discussed advantages and disadvantages of remote hearing formats (telephone / video / etc.). Members explained some judges have been calling agreed matters at the beginning of telephonic court calendars, whereas some others call the matters strictly in the order of the calendar. Committee members agreed that taking agreed matters first can improve efficiency, but that ultimately it may depend on the specific calendar as to whether it is possible (i.e. for chapter 13 calendars; the length and volume of the calendars and Trustee initial run through makes them different and something that may not benefit / be possible to address taking matters out of order like this). Regarding chapter 13 calendars, the Members discussed the possibilities of ch13 self-calendaring and how it might be possible to schedule hearings in sections (i.e. a certain number per hour, etc.) to try to improve efficiency.

LAC discussed that Zoom is being used on many hearings, and practitioners have expressed that it has advantages over telephonic-only hearings, including reduced (free) costs. It was acknowledged that effectiveness/efficiencies depend on the type of calendar – i.e. it can pose greater difficulties with high volume calendars like chapter 13, and that generally the cost effectiveness varies depending on practice area. Administration of zoom meetings also seems to create additional burden on court staff (& trustee staff) for administering the proceedings. Some members have observed high-volume state court calendars utilizing zoom, and practitioners indicated it appears successful. Members agreed there is potential for replacing telephone hearings w/ zoom video and it is worth looking into the added administration costs/effort as well as the different Judge's preferences. It will likely save parties' money. Additionally, zoom has advantages in both large cases and for pro se / pro bono parties, and may help with integration of ongoing efforts to virtualize the pro bono courtroom helpdesk project (if calendars conducted via zoom).

Committee agreed to create subcommittee to continue discussion re: virtual hearings processes. Members Leyza Blanco, John Page, Robert Furr, Laila Gonzalez, Nancy Neidich, Peter Kelly, Michael Hoffman indicated they would like to be involved with subcommittee for virtual hearings. They will confer together to propose ideas.

6. Electronic Noticing of Parties

At prior meeting, LAC Committee agreed that no further action would be taken regarding this topic (examination of electronic noticing issues). LAC Committee agreed to remove this item from the committee agenda.

7. Reaffirmation Agreements.

Committee discussed concerns raised regarding reaffirmation agreements and their approval at/near/after discharge. Chair explained that Judge Russin had a number of cases recently involving Motions to Vacate Discharge solely for the purpose of approving reaffirmation agreements. In general, the Motions going before the court are seeking to vacate discharge to allow for reaffirmation and then reinstate the discharge. This practice / motion is discouraged and prompted discussion of whether a procedural mechanism could be created that could help out with this issue. The

Committee discussed suggestions including possible delay of the discharge to enter the reaffirmation, then enter discharge, possible procedure to show a basis for retroactive relief if approval sought after discharge (to reflect the agreement was made prior to the discharge per 524(c)), or possible adoption of procedure for Motions to determine reaffirmation agreement reached prior to discharge. The LAC discussed that this is something that may be best addressed through the local rules, and agreed to raise the topic and suggestions to the Local Rules Committee.

8. **ADDITIONAL TOPIC** – Practitioners have raised concerns to Members regarding the requirements for wet signatures and have indicated discussion / consideration may be helpful. Committee agreed this may be a new agenda item for next meeting.

Motion to adjourn meeting was approved, and meeting concluded at 3:15PM.