

LAWYER ADVISORY COMMITTEE

United States Bankruptcy Court
Southern District of Florida

**IN PERSON MEETING WITH
BANKRUPTCY BENCH**

November 8, 2019

Present at the meeting: Zach Shelomith, Robin Weiner (by phone), Gerard Kouri, Laila Gonzalez, Leyza Blanco (by phone), Heidi Feinman, Rilyn Carnahan, Eric Silver, Michael Johnson, Ross Hartog, Nadine White-Boyd, Ashley Bruce, Annika Miranda, Jeffrey Fraser

Judges Present at the meeting: Chief Judge Isicoff; Judge Mark; Judge Hyman; Judge Mora; Judge Cristol

Agenda previously emailed

Meeting commenced at 1:30

Comments by Judge Isicoff

Welcome! Some terms are ending; in interested in continuing should let Judge Isicoff know

I. Old Business/Subcommittee Reports

- a. Review and work on Local Form Substitution of Counsel together with Local Rules Committee (report by J. Fraser)

This was on agenda last year; looking for most efficient way to notice all parties of withdrawal; suggested Local Form and Local Rule package that will be submitted to all the Judges; intent to mirror MD Fla with a pleading that when filed, Court will issue notice in all related cases; however until our Clerk's office has technology to get this done automatically; this will be on hold; goal to take burden off of Clerk's office.

Local Rule Report: 70 pages with new rules, reasons for new rules; still working on 1 Chapter 13 issue change in procedure regarding confirmation and 341 hearings being set; will be submitted for Judge Review.

Judiciary budget being further slashed; Court is working as efficiently as possible.

- b. Chapter 11 Fee Guidelines: (R. Furr, N. White Boyd, H. Feinman) Subcommittee Report

Trying to mirror items in the MD Fla., these issues may be more suited for Local Rules Committee; discussed change to fee guidelines; discussed MD concept of allowing attorney to apply pre-petition retainer without a fee application at the beginning which allows them to essentially take the funds and apply to services; Judge Isicoff concerned that some Chapter 11

practitioners should not have such an ability; there is a strong probability that disgorgement will be difficult if the funds are already spent.

Judge Mora has allowed post-petition “retainer” funded monthly which are not touched until authorized; only in 1 case has she had a request for monthly draws; there are instances in which the retainers are large enough where this may come up.

Judge Mark: do we need to reduce the 120 gap period between fee apps?

Court does not favor this proposal.

- c. Pretrial order issued in adversary proceedings. (R. Hartog, R. Carnahan, A. Miranda, J. Fraser). Report by Judge Grossman.

With Judge Grossman and Jeff’s involvement, advanced the process and ideas. New pre-trial order, status conference order and procedures were sent to everyone; looked to MD and draw on some of their procedures and use existing rules, forms and procedures to not upset the apple cart too much.

Judge Kimball raised some concerns directly to Judge Grossman as did other Judges which need to be incorporated

Generally, when Adversary Proceeding filed, get status conference hearing about 90 days out; Addressed Rule 26(f) conferences which we opted out of; Judge Grossman suggests to set these off of status conferences

What does a discovery schedule look like?

In advance of status conference; certain items must be resolved 14 days before, parties must meet and discuss certain items as listed

At status conference need to announce dates and deadlines and be prepared to submit form of pre-trial order; order has certain defaults that can utilize

Informal telephonic discovery conference at the request of parties; before filing formal discovery motion; ask the court to have informal conference with suggestions by court; Judge Isicoff uses this process; Judge Hyman would hate to do anything off the record but Judge Isicoff says it’s not a hearing; just a discussion; not used in pro se matters

Judge Mark concerned in the smaller cases if people show up at status conference and they are nowhere with the discovery – Judges will have to be much stricter about not continuing pre-trials; need to enforce the procedure

Need to make parties understand there are deadlines that must be met pending unusual circumstances.

Those who represent trustees do not think this new change will delay matters esp. since it forces parties to talk.

Pretrial and Trial Order: has some suggested default deadlines but parties can discuss; Judge Kimball raised concern with expert disclosures (should be 60 days prior to pre-trial); will further tie down. Judge Isicoff thinks summary should be provided more than 4 days prior to trial; thinks there should be more time.

Judges, Joe and Jose will add further comments in writing to J Grossman

- d. Restrictions on making changes to mailing matrixes and weighing costs to Trustees to permit striking recipients of undeliverable or returned mail.

Rilyn brought this up to LAC; Chapter 7 trustees concerned that using official mailing matrix when address is bad address or attorney receiving electronic notice; goal to reduce postage costs;

Judge Hyman indicated that when mail is returned, Clerk notices debtor to change addresses and often it doesn't get corrected; suggested manually making notes on the official mailing matrix that is attached to the certificate of service.

Coming down the pike is a rule that may take care of the email and post problems.

Will discuss with other judges.

II. New Business/Discussion with Judges

- a. Use of District Court Peer Review Committee (Judge Isicoff)

Bankruptcy Judges are supposed to use Peer Review as well; seems to have worked with disciplinary matters but appears broken down when see lawyer with mental health or substance abuse issues (erratic behavior); In District Court, Peer Review Committee will send a letter to appear at a meeting and if doesn't show up may be a District Court issue regarding the attorney's continued ability to practice.

Doesn't believe this committee works for substance abuse and mental health issues; not really set up for this; would like LAC to think about alternatives: maybe own peer intervention or support committee who would be willing to reach to person of concern; suggests 6 volunteers

Florida Lawyers Assistance Program is very useful resource;

Every Florida Bar attorney is supposed to have inventory attorney; if we see a lawyer slipping suggest to have volunteer look at the files to make sure clients aren't suffering

If any interest, Judge Isicoff would arrange for speakers to "train" volunteers

Judges support this process

Need to be sure these volunteers have proper training and resources

Ron Ponzoli spoke at Bench and Bar Conference about his personal issues

Ross and Rilyn will work with Judge Isicoff on fleshing this out; Judge Mora will work with Eric for programming at next Retreat in Marco Island

b. Proposed Small Business Act Local Rules (Judge Isicoff)

Just bringing to attention – proposed Bankruptcy rules comment period ends on 11/13; Judges considering local rule adopting proposed interim rules when they come out; other courts may tweak these rules

341 notice will include sub-chapter V trustee name

Forms will need to be reviewed and possibly tweaked as Court gets prepared.

c. “No Look” fee guideline for creditor attorney fees in Chapter 13 (J. Fraser)

Potential issue and/or suggestion about attorney fees; debtor’s attorney has “no look” fee of \$4,500; certain items included and other fees for activities

Creditor attorneys always file the same or similar documents in Chapter 13 cases; to match Debtor’s counsel no look fees would the Court be amenable to “no look” fees for creditor activity?

Outside Florida this has become an issue in Texas; Court in S.D. Texas struck creditor’s fees for no time entries and suggested this course of action; he’s seen similar issue in Tenn.

Fannie Mae guidelines could be the beginning of the process

3002.1 Fee or Notice of Payment Change – Laila has an issue with charging debtor fees; feels when debtor has to pay the fee there should be more scrutiny; says case law exists to support her position.

Jeff says this is just a platform for discussion; can possibly carve out exceptions to no look fee; determining a presumptively approved fee subject to objection

Judge Isicoff has no objection exploring this issue to see what parties can agree on

Jerry will assist; will bring back at next LAC committee

d. Pro Bono Help Desk and Pro Bono Pledge – see attached materials (E. Silver and Z. Shelomith)

Joint presentation by BBA and Pro Bono committee; to bring to Court’s attention that Local

Bar trying to get more practitioners involved in pro bono; asking all members sign a pro bono pledge; Fla Bar rule that allows limited engagement has allowed for pro se desk at Chapter 13 calendars with limited waivers

Judge Isicoff asked for people to man these desks

If Court sees someone not on a Chapter 13 day that is struggling, should encourage BBA members to provide limited assistance with the waiver signed

Need to be sure that we are not putting a lawyer in a position that is inconsistent with the Fla Bar rule (which was intended for Clinics); need to be sure form is clear; may be looking at obtaining a Fla Bar opinion.

BBA has bought into the Pro Bono obligation

Limited representation forms to be emailed to Court for courtrooms and LAC

- e. Limitation on number of pages copied on one sheet of paper for paper-served copies. (H. Feinman)

Judges to discuss at Judges meeting

Future meetings to be scheduled after this meeting.

Meeting concluded 3:20