

FLSB BANKRUPTCY LAWYERS ADVISORY COMMITTEE

Meeting July 19, 2018

Meeting commenced at 5:05 pm

Present at the meeting: Leyza Blanco, Annika Miranda, Ashley Bruce, David Samole, Eric Silver, Gerard Kouri, Heidi Feinman, Jeff Fraser, Mike Johnson, Nadine White-Boyd, Rilyn Carnahan, Robert Furr, Ross Hartog and Jim Schwitalla

Not present: Robin Weiner

Agenda emailed earlier in day-

Update that prior discussion regarding requesting Judges to “publish” their opinions on Court website had been tabled by agreement of those at the prior meeting.

OLD BUSINESS:

1. Review of change of law firm procedures/comparison to Middle District procedures:
Clerk of Court Joe Falzone emailed that he brought the matter to his time and is awaiting further direction. Joe asked for additional information on the experiences of changing notice due to moving firms which will be shared with him. One issue is difficulty in obtaining signatures from prior firms to maintain closed files. Question arose if ALL cases need to be addressed by firms after attorney has moved, esp. those cases that have been closed for years. Discussion regarding form requirements and the need to find attorney at prior firm to be responsible. Agreed that goal is not to copy Middle District procedures in entirety but take those procedures that work best. Joe Falzone will report back.

NEW BUSINESS:

1. Chapter 13 Practice:

a. Fee Guidelines (not just no look fees but all Guidelines):

Judges want comments on Chapter 13 fees generally; discussion regarding whether changes are necessary. Current “no look” fee is \$3,500 plus ala carte menu for other services. These fees can be as much as \$750 and if exceeds that a fee application will be filed; Middle District has a \$4,500 “no look” fee but no ala carte fees, also has \$50/month post confirmation monitoring fee. Total fees in Middle District can be as much as \$7,000 for a Chapter 13; discussion that \$3,500 fee has been set at this amount for some time and Court should consider raising the “no look” fee as well as allowing a post confirmation monitoring fee. Comments made that Chapter 13 Trustees should be “encouraged” to take more actions against attorneys who are not handling their cases appropriately.

Agreed by members to continue this item to next agenda to give further review and allow Chapter 13 trustee to weigh in on the matter

b. Unused Chapter 13 Fees:

Discussion regarding how unused fees should be distributed. Depending on how fees are used can prevent a Debtor from losing his/her home to foreclosure. Currently, Chapter 13 only takes a portion of the fees deducted from a plan-approximately 10% in Broward and 11.111% in Miami

Dade. Statute provides that Chapter 13 trustee can charge UP TO a certain amount and that unused fees are to go to the U.S. Trustee Program. However the U.S. Trustee Program does not want these funds. There is no statutory authority regarding what to do with these excess funds but the Chapter 13 trustees are using the excess monies to pay unsecured creditors. Discussion had whether monies should be distributed to creditors who provide a direct benefit to the debtors since it is the debtors' monies-meaning first to secured creditors and then to priority and administrative creditors.

Agreed by members to continue this item to next agenda to allow Chapter 13 trustee to weigh in on matter.

2. Revised Chapter 11 Fee Guidelines:

Question raised what Bench is asking LAC to review. Some issues have already been commented upon by U.S. Trustee Program. Comment that some expense reimbursements should be reconsidered such as expense reimbursement for use of Brightline train which allows attorneys to work while traveling. Leyza will seek additional guidance from the Bench.

Agreed to have subcommittee formed to work on issues-members include: Robert Furr, David Samole, Heidi Feinman, Nadine White Boyd, and Leyza Blanco. Robert will chair.

3. Pretrial Order issued in Adversary Proceedings:

Court looking at whether to revise the pretrial order. Comment made that at pretrial conference parties will generally ask for extensions that will routinely be granted but deadlines have already passed under current order; unsure if new deadlines can be established; additionally it was noted that certain deadlines are listed in docket to be 20 days when order says 28 days. Further comment that sometime pretrial conference will be set before the answer is due; question becomes HOW to determine if a Rule 26 conference is needed. Some of the judges "say" they will only grant one continuance of the pretrial conference but others routinely grant multiple continuances. A consistent bench would be helpful. More recent issue arose regarding the disclosure of experts and deadlines to produce reports. Bench is not consistent regarding deadlines for rebuttal witness reports. Another suggestion made that a case management conference be set early to create a discovery plan that gives deference to the litigants. Agreed to have subcommittee formed to work on these issues- Ross will chair.

4. Should LAC minutes be published?

All agree that minutes should be published after LAC members review.

FUTURE MEETING DATES:

1. September 20, 2018 at 5:00 pm
2. November 15, 2018 at 5:00 pm

Committee agrees to ask Judges to schedule their meeting to coordinate with LAC meeting so that Bench and LAC can meet in person and discuss matters. Leyza to coordinate.

Meeting adjourned 6:15 p.m.