

MARYLAND STATE BAR ASSOCIATION
CONSUMER BANKRUPTCY SECTION
OPEN MEETING
MINUTES (v.1)
LOCATION: BAR HEADQUARTERS
March 10, 2009

ATTENDEES:

Christopher Fascetta	Dan Press	Alexander Gordon	Mary Park McLean
Tanya Kripetz	Charles Broida	Larry Robinson	Stacy Pace
Douglas Gorius	Jeff Nesson	Harris Ammerman	Antonio Aquia
Richard Stolker	Sari Kurland	Mark Scurti	Michael Wolff
Gerard Vetter	Marc Appel	Alan Belsky	Michael Cantrell

MINUTES:

I. CALL TO ORDER

The Meeting of the Consumer Bankruptcy Section (“Section”) was called to order at approximately 6:07 pm by Christopher Fascetta.

II. MINUTES

The Minutes from the February 12, 2009 meeting were discussed. Michael Wolff moved to amend same to state on page 3 that he volunteered to develop the Chapter 7 and Chapter 13 seminars. The motion was seconded by Christopher Fascetta. The motion was passed.

Two typographical errors were identified --- 1) page 3, “us” should state “use”, and, 2) page 3, “34q” should state “341”.

With the aforementioned edits, Richard Stolker made a motion for approval of the Minutes. The motion was seconded by Gerard Vetter. The motion passed.

III. COMMITTEE REPORTS

Brown Bag Lunches

Mary Park McLean and Dan Press reported that the lunches are going well with about 15 people attending the sessions, but they are looking for new topics. The next lunch session will address taxation issues and take place on the fourth Wednesday of April, 2009 in Rockville.

Tanya Kripetz raised the possibility of a lunch session addressing the issue of lender’s fees that are included in proof of claims, and the possibility of having the

lunch sessions broadcast by conference call, pod casts or via the internet. There was general discussion regarding these issues.

There was general discussion regarding the scheduling of the lunch sessions to take place in Baltimore. Christopher Fascetta suggested that anyone interested in coordinating such sessions to contact him, Mary Park McLean or Dan Press.

CLE

Ocean City Program

Alexander Gordon described the program and stated that the goal was to have the three branches of Maryland government attend and discuss how the foreclosure crisis is impacting upon Maryland homeowners. At the moment, Governor O'Malley, Chief Judge Bell, Senators Frosh and Hoyer have been invited, but have not yet committed to attend. Chief Judge Keir, the director of the American Bankruptcy Institute (ABI) and Delegate Doyle Neiman have agreed to attend.

There was general discussion regarding the presentation of speakers who tentatively include Bud Tayman, Gerard Vetter and Phillip Robinson. Suggestions for other speakers should be provided to Alexander Gordon.

Nuts and Bolts Program (Chapter 7 and 13)

Michael Wolff reported that he is developing the basic outline for a program similar to the Chapter 13 program recently presented by the Chapter 13 trustees. There was general discussion regarding mock trials and the timing of the program. He will report back to the council once more details are developed.

Legislative

Sari Kurland reported that Richard Montgomery of the MSBA advised her that so long as no other MSBA Section has taken a position on the issues, then the Section can take a position on the legislation pending before the Maryland legislature concerning homestead exemptions. She advised that a hearing was scheduled for March 14, 2009.

Liaison

No report.

Others

Board of Governors

Mark Scurti reported that the Section currently has about 357 members. At the last Board of Governors' meeting those MSBA Sections which have in excess of 1000 members each raised the possibility of having a member sit on the Board of Governors.

He also advised that the Committee of Laws is regularly reviewing issues pending before the Maryland Legislature.

IV. OLD BUSINESS

Pro Se Matters

Mary Park McLean and Gerard Vetter reported that Jessica Vollmer had contacted them regarding coordinating volunteers for the Debtor Assistance Program ("DAP"). Any suggested changes to the DAP flyer that was discussed should be given to Gerard Vetter.

There was general discussion that MVLS would be involved in the DAP only in Baltimore, not Greenbelt, and the concern that volunteers will not be allowed to refer debtors to themselves or other specific attorneys for assistance.

Dan Press made a motion to have a meeting scheduled with Judge Keir, Judge Gordon, Mark Neal and Jessica Vollmar to address the concern surrounding the anti-solicitation requirement that is being imposed upon the DAP attorneys who work at the DAP's help desk. The motion was seconded by Jeff Nesson. The motion did not pass due to 3 abstentions, 8 no votes and only 4 yes votes.

Michael Wolff made a motion for a resolution to confirm that the Section is in support of the Debtor Assistance Program, as well as, the low bono and deferred payment attorney list concepts. The motion was seconded by Gerard Vetter. The motion passed with 11 yes votes, 1 no vote and 3 abstentions.

Appendix F

Christopher Fascetta summarized the major issues in a letter dated February 12, 2009 that he had received from Chief Judge Keir ("Keir's letter"), as follows – the bench would agree to amend Appendix F to eliminate the \$125.00 per month provision, and to allow for the balance of attorney fees to be paid over the first 12 months of the plan term, with any that cannot be so paid, to be paid thereafter pro rata with the secured and priority creditors. He then stated that Keir's letter did not suggest any changes to the "no look" amounts, the "a la carte" fees or the ability to file a fee application.

General discussion ensued, which included the observation that Keir's letter added a new provision which would allow for a fee adjustment in the event of "extraordinary circumstances." Dan Press made a motion to have the Section respond to Keir's letter thanking the bench for their consideration and that the Section accepts the revisions to Appendix F, as set forth in said letter. Alan Belsky amended the motion clarify that the Section is accepting the revisions to Appendix F as noted in the 3 page exhibit to Keir's letter, rather than the text of Keir's letter itself, with said exhibit to be attached to these Minutes and the letter being attached only if Christopher Fascetta is given permission to do so by Chief Judge Keir. The motion, as amended, was seconded by Gerard Vetter. The motion, as amended, passed unanimously.

V. NEW BUSINESS

Christopher Fascetta reported that he had initiated discussions with MICPEL about the possibility of having a loan modification seminar should legislation attendant to the same currently pending before the Maryland legislature pass.

Christopher Fascetta reported that Chief Judge Keir's law clerk is seeking employment and that he is in possession of her resume.

Christopher Fascetta reported that Kathy Howard (MSBA Board of Governors) invited a member of the Section's Council to attend a board meeting to inform it of our current activities and position on current foreclosure issues. Gerard Vetter will attend the meeting on behalf of the Section.

Christopher Fascetta advised that nominations of officers for next year will take place at the next meeting.

After general discussion, it was decided that the next Council meeting will take place on April 14, 2009, not April 7, 2009. The location will be Rockville.

VI. UPCOMING MEETING DATES

April 14, 2009

May 12, 2009

June 12, 2009 (MSBA Convention in Ocean City)

VI. ADJOURNMENT

A motion was made to adjourn the meeting by Christopher Fascetta. The motion was seconded by Gerard Vetter. The motion passed and the meeting was adjourned at 8:13 pm.

Respectfully submitted,
/s/ Michael T. Cantrell
Secretary

APPENDIX F

CHAPTER 13 DEBTOR'S COUNSEL RESPONSIBILITIES AND FEES

1. A copy of paragraphs 2 and 3 of this document, Chapter 13 Debtor's Counsel Responsibilities and Fees, must be delivered to the debtor(s) by counsel at the time counsel is employed, in addition to the retainer agreement by and between the debtor(s) and debtor's counsel.
2. With the exception of adversary proceedings, appeals, and U.S. Trustee audits, for which separate arrangements may be made, counsel must represent their client in all matters in the bankruptcy case as long as counsel is counsel of record. This includes defending motions, including motions for relief from stay, bringing objections to claims, and prosecuting motions on behalf of debtor. After the initial engagement, counsel may not demand payments from the debtor as a precondition to doing the work. Notwithstanding the foregoing, the Court may, upon prior application, allow counsel to enter a limited appearance, including, but not limited to, representation on a pro bono or reduced fee basis.
3. Counsel must remain as counsel of record until the entry of a court order allowing the withdrawal of appearance, or until the case is dismissed or closed. The failure to receive payment for services rendered or to be rendered may serve as the basis for counsel filing a motion to withdraw.
4. The following fee arrangements are presumed reasonable under Section 329 and allowable under Section 330 and require no application or approval, except as stated below. This presumption is rebuttable and the fee can be the subject of an order to justify the fee.

If no objection or order to justify fee is filed or entered, the presumptively reasonable fee is deemed allowed under 11 U.S.C. § 330 without the entry of an order. However, if an objection or order to justify fee is filed or entered, the burden shall be upon debtor's counsel to prove that the fee should be allowed under 11 U.S.C. § 330 under the facts and circumstances of the case for which the fee is sought. Notwithstanding the foregoing, any objection filed by a trustee or other party in interest shall describe the asserted factual basis for rebutting the presumption.

A. A flat fee, not to exceed \$3,500.00 for representation of the debtor for all matters in the main case. However, counsel may apply for ~~by application request~~ approval of additional fees for work done upon matters that were both not reasonably expected and that are extraordinary, or for work done after ~~6 months~~ 90 days following the entry of the order confirming plan until representation ends. Such application may be made on Local Form E with notice (Local Form E-1).

B. A flat fee, not to exceed \$4,500.00 for representation for all matters in the main case. Counsel waives all opportunity to apply for additional fees in the main case, except that Counsel may by application request approval of additional fees for work done upon matters that were not reasonably expected and that are extraordinary. Counsel may apply for approval of additional fees by application made on Local Form E with notice (Local Form E-1).

C. A flat fee, not to exceed \$2,000.00 for representation of the debtor on all matters relating to plan confirmation. Counsel may apply for ~~compensation for additional fees for~~ prosecuting or defending motions not relating to the plan confirmation, including, without limitation, motions for relief from stay, or for claims objections. Such application may be made on Local Form E with notice (Local Form E-1). The requirement for representation in all matters in the bankruptcy case, stated in paragraph 2 above, applies without regard to the more limited coverage of the \$2,000.00 fee arrangements set forth in this subparagraph.

~~D. In any fee arrangement described in subparagraphs A, B and C above, the plan may allow up to a total of \$2,000.00 (minus any deposit or retainer received) to be disbursed by the Trustee to counsel, before any disbursement by the Trustee to other creditors, except claimants whose claims are described in 11 U.S.C. § 507(a)(1). Unless otherwise provided by the confirmed Plan, any remaining unpaid balance of the fee shall be paid in a monthly amount not greater than the lesser of: (a) \$125.00 or (b) 90% of the monthly Plan payment in the confirmed Plan.~~

In any fee arrangement described in subparagraphs A, B and C above, the plan may provide that the Trustee will disburse any unpaid fees to counsel and other claimants whose claims are described in 11 U.S.C. § 507(a)(2), before any disbursement by the Trustee to other creditors except claimants whose claims are described in 11 U.S.C. § 507(a)(1). Unless otherwise provided by the confirmed plan, if, after payment to claimants whose claims are described in 11 U.S.C. § 507(a)(1), the remaining unpaid balance of the attorney's fee, the Trustee's commission and other claims described in 11 U.S.C. § 507(a)(2) cannot be disbursed in full from the plan payments due during the first 12 months of the plan term, then the remaining unpaid balance of such fee shall be disbursed on a pro rata basis with any other priority and/or secured claims.¹

5. All fees are subject to subsequent disgorgement upon an order of the court. No plan or confirmation order shall bar by res judicata or otherwise the subsequent review and potential disgorgement of the fee, upon objection or order to justify fee and notice thereof.

6. Full compliance with Federal Rule of Bankruptcy Procedure 2016(b) is required, including the filing of a Supplemental Disclosure on Local Form E-2 of additional funds received from any person, other than distributions from the Trustee under a confirmed plan. Counsel shall state in the Disclosure of Compensation filed pursuant to Federal Rule of Bankruptcy Procedure 2016(b) whether the fee arrangement is one of the flat fees described in subparagraphs A, B, or C of paragraph 4 above, and, if so, which such fee arrangement applies.

G. Nothing in this Appendix F shall preclude, restrict, or prohibit counsel from ~~opting out of the~~ entering into fee arrangements different from those arrangements described in paragraph 4 above. Counsel must file an application for compensation in accordance with the

¹ Nothing in subparagraph 4.D is intended to alter or amend any obligation counsel may have under nonbankruptcy law concerning escrowing, administering, or accounting for any funds disbursed to counsel pursuant to these procedures.

Bankruptcy Code, Bankruptcy Rules, and the Rules of this Court for any fee arrangement that is different from the fee arrangements described in paragraph 4 above.