

Maryland State Bar Association
Consumer Bankruptcy Section
Executive Council Open Meeting
Shulman Rogers Gandal Pordy & Ecker, P.A.
Rockville, Maryland
Minutes
October 16, 2006

Attendees:

J. Nesson	D. Gorius	L. Jenkins	M. Wolff
M. McLean	B. Weiss	D. Cohen	M. Kivitz
T. Kripetz	R. Stolker	M. Cantrell	T. Aquia
C. Fascetta	S. Field	B. Tayman	P. Anderson
S. Levinson	L. Robinson	S. Kurland	

MINUTES:

I. Call to Order

The meeting was called to order at 6:17 p.m. D. Gorius, Section President and Executive Council Chair, presided and thanked everyone for coming. He further thanked Shulman Rogers for the use of the conference room.

II. Review Of September 2006 Meeting Minutes

The minutes of the September 19, 2006 council meeting were reviewed by the council. Upon the motion of P. Anderson as seconded by C. Fascetta, the September 2006 meeting minutes were accepted.

III. Chair's Report

A. Maryland Bar Journal

D. Gorius spoke with J. Eveleth, who indicated she would like to publish our sections means-testing article as well as M. Neal's. D. Gorius is going to do an article on preparation of clients for 341 meetings. M. Wolff advised he attended the US Trustees' means-testing workshop and noted that the unresolved issues were discussed. M. Wolff feels these unresolved issues will only be determined by litigation. R. Stolker mentioned that the US Trustee is being advised to use the IRS manual for issues not really related to bankruptcy. M. Kivitz suggested using

the box at the bottom of schedule I to explain the difference between before bankruptcy and current time to try to satisfy any trustee scrutiny. M. Scurti and M. Kivitz have already submitted their articles to Ms. Eveleth. B. Tayman suggest broadening the creditor's article to include changes to the automatic stay. B. Weiss suggest writing an article about how bankruptcy can benefit other clients. Drafts of these articles are due by the first of the year.

B. Daily Record Article

A. Gordon will be doing an article about life since BAPCPA and will include numbers and statistics.

C. Debtor Assistance Manual

There was discussion as to whether we should participate in creating/editing this manual. C. Fascetta and D. Gorius both mentioned that the joint committee of the BBA/MSBA had already reviewed and submitted comments on the manual, so our participation is already underway. C. Fascetta continued that all of the typographical errors have been corrected, and more emphasis has been put on the dangers of pro-se filing. M. Wolff made a motion to table the issue of our continued participation until more input is requested from the committee; T. Aquia seconded. Motion carried.

III. New Business

A. Future Meeting Dates

The next meeting will be on Tuesday, November 14, 2006, in Elkridge at the Elkridge Furnace Inn.

IV. Old Business

A. Fee Committee

M. McLean reported that the Greenbelt judges desire closure of the fee issues. The committee will circulate summary proposals, including uniform 2016b, and a simplified fee application for fees exceeding \$4500. This should be ready for presentation at the December 2006 MICPEL seminar.

B. MICPEL/CLE

S. Levinson reported that he is awaiting word from Judge Alquist to determine whether she will be participating in the December 8, 2006 MICPEL, which is being held at the Columbia Sheraton. So far, three judges, two Assistant US Trustees, and four Chapter 13 Trustees have agreed to participate. S. Levinson will ask the list-serve members to come up with questions for the trustee to address at the seminar. B. Tayman added that this MICPEL cries out for a subsequent workshop on plan formulation; S. Levinson advised he is working on just such a project for Spring 2007.

C. Membership

D. Gorius advised that he will update the council as to membership numbers via the list-serve.

D. Holiday Party

T. Kripetz has agreed to plan the party, but does not have the time to dedicate to obtaining sponsors, so someone else will have to do that. T. Kripetz further suggested that the party be the evening of the 12/8/06 MICPEL, and at the same location. In terms of obtaining the sponsors, it is necessary to determine an estimate of how many people would attend. D. Gorius advised he would contact vendors regarding sponsorship. T. Kripetz will call the Columbia Sheraton to determine availability.

E. Case Law Update

B. Weiss reported on four cases of interest.

The first was an appeal before Judge Titus from a bankruptcy ruling by Judge Mannes, and involved what documents are required to substantiate debt-buyers' proofs of claim. A similar matter was heard by Judge Lipp. Both judges concluded that if the debtor schedules the debt on Schedule F, a debt buyer does not have to provide documentation at all, no proof of assignment of the debt is required. The worst case for such a creditor is that the claim would be reduced to the amount scheduled by debtor on Schedule F.

The second case is In Re: Miskimon 06-12813-DK; Debtor's Motion to Reconsider the Order Denying the Motion to Reopen the (Ch 7). Trustee had filed

a Report of No Assets, and the clerk certified that all requirements of Section 521(a)(1) had been met. Additionally, the deadline for filing Complaints Objecting to discharge had passed. However, debtor failed to comply with Section 727(a)(11) by timely filing a certificate of completion of financial management course; debtor filed the certificate approximately 15 days beyond the deadline for filing same. The case was closed without discharge. Debtor moved to reopen the case to file the certificate and obtain the discharge, and debtor further sought waiver of the fee to reopen the case. That motion was denied, and debtor moved for reconsideration thereof. Waiver of the filing fee was denied; the court determined that although the court has authority to waive such a fee, the debtor's circumstances did not provide facts warranting such a waiver. The court denied the motion for reconsideration without prejudice to the debtor's filing a new Motion to Reopen, accompanied by the payment of the required fee. B. Weiss commented that this case is significant for creditors and creditors' counsel—what should a creditor do when a case is closed but debtor has not received a discharge? Does the creditor continue with collections/garnishments even though there is the possibility that the case may be reopened and the discharge obtained?

The third case is In Re: Tubman, 06-15054-RAG. Debtor sought extension of the stay in her second case within 12 months; the motion to extend the stay was erroneously filed in the first case. The court considered two issues: 1) does the court have the ability to extend the stay under Section 105 without a motion; and 2) if the stay terminates, does it terminate as to the Debtor or as to property of the estate. The court continued the stay on an emergency basis until the court issues its final ruling on this matter.

The fourth case is In Re Cheeks, 06-13024-NVA. There is a case with similar matters: In Re Church, 06-10782-PM. In these cases, debtors challenge Local Rule 3015-1 requiring use of the form plan unless there is a showing of compelling and unusual circumstances requiring deviation therefrom. Debtors in these case filed conforming plans, but include certain non-standard provisions. Hearings have yet to be held.

F. Brown Bag Lunches

M. McLean reported that the last lunch was well-attended. B. Tayman thanked M. McLean for taking over the lunches. M. Fried will lead one on tax-related issues, and S. Robinson also plans to lead one.

IV Adjournment

Upon the motion of C. Fascetta, as seconded by T. Aquia, the meeting was adjourned at 8:00 p.m.