

MARYLAND STATE BAR ASSOCIATION
CONSUMER BANKRUPTCY SECTION
COUNCIL MEETING
MINUTES (v.1)
LOCATION: Bar Headquarters
November 10, 2008

ATTENDEES:

Michael Cantrell	Michael Wolff	Richard Stolker	Larry Robinson
Laura Margulies	Scott Robinson	Sari Kurland	Dan Press
Harris Ammerman	Nancy Grigsby	Terri Lowery	Mary Park McLean
Chris Fascetta	Charles Broida	Alex Gordon	Gerard Vetter

MINUTES:

I. CALL TO ORDER

The meeting the Consumer Bankruptcy Section (“Section”) was called to order at approximately 6:20 pm by Chris Fascetta.

II. MINUTES

The Minutes from the October 16, 2008 Council Meeting were discussed and amended to add that Michael Wolff would contact the pro bono group in Montgomery County, Maryland. A motion for approval of said Minutes, as amended, was made by Richard Stolker and seconded by Gerard Vetter. The motion passed.

III. COMMITTEE REPORTS

Social Committee

Sari Kurland advised that the holiday party is scheduled for December 18, 2008 and reviewed various issues surrounding the same. Christopher Fascetta, Dan Press, Michael Cantrell and Sari Kurland agreed to solicit donations from companies to underwrite the costs for the holiday party.

Pro Se Committee

The committee reported that on October 30, 2008, it met with representatives of the Bankruptcy Bar Association, the Bench and several legal service providers. Jessica Volmer created a report summarizing the group’s discussion to be presented to Judge Gordon. Generally, the group is suggesting that a “Help Desk” be

established at each courthouse, staffed by volunteers, to assist pro se debtors under the umbrella of Maryland Volunteer Legal Services (“MVLS”).

There was general discussion regarding the unbundling of legal services by attorneys in the context of Chapter 13 matters, assessment of a person as being pro bono, or “low” bono, Appendix F, compensation paid to MVLS and the concept of limited appearances. The general consensus of the Council is to have the Committee to continue with its participation in this pro se project.

Mary Park McLean will circulate a copy of Jessica Volmer’s report to members of the Council.

Ocean City Program

There was general discussion regarding the type of presentation that the Section would make during the program. Christopher Fascetta made a motion to change the format from past years and to utilize the approach recommended by Alex Gordon which would involve representatives from the Maryland legislative branch (Senate and House), the Maryland Rules Committee, and the judiciary discussing problems faced by consumers in the State of Maryland. The motion was seconded by Dan Press. After general discussion, the motion passed.

Council noted and applauded Bud Tayman’s significant involvement in all of the past presentations made during the Ocean City Program.

Brown Bag Luncheons

Mary Park McLean indicated that the recent Brown Bag Luncheon seminar presented by Dan Press and Brett Weiss was a success.

IV. Old Business

Amendments to Appendix F

Dan Press stated that after the proposed revisions to Appendix F were circulated to members of the Bar’s community, the comments were generally positive. One comment, however, that merited further thought was the possibility of indexing the attorney fees along with adjustments in the cost of living pursuant to 11 USC Section 104. After general discussion, several competing motions were made. Christopher Fascetta moved to table all pending motions. The motion was seconded by Gerard Vetter and passed. Subsequently, Michael Wolff made a motion to allow Dan Press and Christopher Fascetta to draft a letter to the Bench (a letter which would contain a footnote that the Bench consider the indexing of the attorney fees pursuant to Section 104), describing the Section’s recommendations for changes to Appendix F, the same having already been circulated to members of the Bar for comment. A copy of the redlined Appendix F to be presented to the Bench is attached to these Minutes. The motion was

seconded by Gerard Vetter and passed. The letter should be delivered to the Bench by November 14, 2008.

Gerard Vetter noted that the two Chapter 13 Trustees who are not on the Section's Council took issue with the letter that had been placed on the Section's MSBA website that suggested they endorsed revisions to Appendix F. Gerard Vetter indicated that said trustees wanted it made clear that they are taking no position regarding revisions to Appendix F.

V. New Business

Gerard Vetter and Nancy Grigsby presented the Section with a check in the amount of \$1250.83, representing surplus funds resulting from the Nuts and Bolts Seminar portion of the Section's education programs. It was noted that said moneys are earmarked for future education programs sponsored by the Section.

VI. Upcoming Meeting Dates

January 6, 2009 at Bar Headquarters

February 5, 2009

March 10, 2009

April 7, 2009

May 12, 2009

VII. Adjournment

A motion to adjourn the meeting was made by Gerard Vetter, and seconded by Nancy Grigsby. The motion passed and the meeting was adjourned at 8:10 pm.

Respectfully submitted,

/s/ Michael T. Cantrell

Secretary

**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, and 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. The foregoing notwithstanding, 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. Counsel may by application request approval of additional fees for work done after 6 months 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).~~

AB. 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** for additional work in the main case.

BC. A flat fee, not to exceed \$3,500.00 for representation of the debtor on all matters relating to plan confirmation, **as well as to filing the debtor's certification of the personal financial management training course and the final request for discharge.** Counsel may apply for additional 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 **for the services for which additional compensation is sought** may be made on Local Form E with notice (Local Form E-1). The requirement of representation in all matters in the bankruptcy case, stated in paragraph 2.

above, applies without regard to the more limited coverage of the \$3,500.00 fee arrangements set forth in this subparagraph.

~~CD.~~ In any fee arrangement described in subparagraphs A, ~~and 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 ~~provide that the~~ Trustee **will disburse any unpaid fees** 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. **if the remaining unpaid balance of the attorney's fee, including the Trustee's commission, cannot be paid in full from the Plan payments due during the first twelve months of the Plan term, then the remaining unpaid balance of such fee shall be paid on a pro rata basis with any priority and/or secured claims.**

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 or ~~B~~ or ~~C~~ of paragraph 4 above, and, if so, which such fee arrangement applies.

7. Nothing in this Appendix F shall preclude, restrict, or prohibit counsel from opting out of the fee arrangements described in Paragraph 4 above and filing an application for compensation in accordance with the Bankruptcy Code, Bankruptcy Rules, and the Rules of this Court.