

## **ABI Commission on Consumer Bankruptcy**

### **Bylaws**

The American Bankruptcy Institute (ABI) has created the Commission on Consumer Bankruptcy (Commission):

The Commission is charged with recommending improvements to the consumer bankruptcy system that can be implemented within its existing structure. These changes might include amendments to the Bankruptcy Code, changes to the Federal Rules of Bankruptcy Procedure, administrative rules or actions, recommendations on proper interpretations of existing law, and other best practices that judges, trustees, and lawyers can implement.

To aid in carrying out this task, the Commission has adopted these bylaws.

#### **I. Membership**

a. The Commission shall consist of the co-chairs and the initial commissioners appointed by the ABI president-elect, ex-officio commissioners, and commissioners appointed to fill vacancies pursuant to paragraph f. Ex officio members have no vote but may attend and participate in Commission meetings.

b. The following persons shall be ex-officio members of the Commission: (i) Eugene Wedoff, (ii) Edward T. Gavin, (iii) the executive director of the ABI, (iv) a representative of the U.S. Trustee's Office, and (v) a representative of the Internal Revenue Service.

c. By agreeing to serve on the Commission, each commissioner commits to making his or her best effort to participate in meetings and make meaningful contributions to the Commission's work

d. Commissioners may not delegate their responsibilities. This paragraph does not prevent commissioners from receiving assistance such as research or advice from colleagues, associates, law clerks, and research assistants.

e. A co-chair or commissioner may be removed only for cause and only by a vote representing two-thirds of the other commissioners. A commissioner who is removed for cause shall also cease to be a member of any committees of the Commission to which the commissioner was appointed.

f. If a vacancy on the Commission arises other than in one of the co-chairs, the ABI president shall consult with the co-chairs. After consultation, the ABI president may, but is not required to, appoint a new commissioner. In the absence of a vacancy, the ABI president may not appoint any new commissioners.

g. If a vacancy arises in one of the co-chairs, the commissioners shall elect one of their number to serve as a co-chair. The resulting commissioner vacancy may, but is not required to, be filled pursuant to paragraph f.

## II. Ethics

a. The Commission's work is a law reform project, intended to further the purposes of the ABI "to support the analysis of insolvency issues," as stated in article I of its bylaws. Model Rule of Professional Conduct 6.4 provides:

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

Commissioners should base their work on their best professional judgment as drawn from their personal and professional experiences. Commissioners should not take positions merely because they advance the economic or political interests of themselves, their employer, or their clients. When commissioners are unable to leave the interests of employers and clients "at the door" for a particular issue, they must recuse themselves from consideration of that issue. If such conflicts are pervasive, a commissioner should consider resigning from the Commission.

b. It is recognized that in their professional capacities commissioners may have argued for legal outcomes that may be affected by the Commission's work. If a commissioner has argued for a legal outcome in litigation or other proceedings (i) that is pending or reasonably certain to occur in the near future and (ii) that would be affected by matters under consideration by the Commission, the commissioner shall disclose that fact to the co-chairs, consistent with Model Rule 6.4. The co-chairs shall have the discretion to decide whether ameliorative measures would be appropriate to ensure the Commission's work maintains its objectivity and integrity. These ameliorative measures generally will mean disclosure to the rest of the Commission. The co-chairs may in addition limit the affected commissioner's participation on the particular issue. The co-chairs may also decide the matter does not require any ameliorative measures if the connection between the Commission's work and the pending litigation is tenuous.

### **III. Confidentiality**

a. The Commission's materials, deliberations and work product are work product of the Commission and are to remain confidential until the Commission determines otherwise. By agreeing to serve on the Commission, each commissioner agrees to maintain the confidentiality of such materials, deliberations and work product. Commissioners may disclose confidential materials, deliberations, or work product only with the express written consent of the Commission co-chairs. For purpose of this Article, "commissioner" includes ex officio commissioners.

b. The requirement of confidentiality in paragraph a. does not prohibit commissioners from (i) discussing substantive issues before the committee with non-committee members to help the committee exercise his or her best professional judgment; (ii) receiving assistance from associates, law clerks, and research assistants in their organization; (iii) authoring scholarly works that touch upon substantive issues before the committee so long as the scholarly works do not reproduce confidential committee materials; or (iv) discussing the work of the Commission in informal or formal settings so long as the commissioner does not reveal confidential Commission materials.

c. The requirement of confidentiality in paragraph a. does not apply to the extent any law, statute, regulation, order, protocol, rule or rule of ethics requires disclosure of a commissioner's work product, materials, communications, or deliberations.

### **IV. Meetings & Quorum**

a. The Commission shall meet from time to time as the co-chairs deem appropriate. Notice of any meeting shall be given to all commissioners as soon as reasonably practicable but in no instance less than forty-eight hours in advance.

b. One-fourth of the commissioners may request a special meeting of the Commission by so notifying the co-chairs.

c. Meetings may be conducted in-person, telephonically, by other electronic means, or a combination of these methods.

d. The co-chairs shall designate the time and place of any meeting.

e. A quorum shall consist of half of the Commission, not including ex-officio members.

### **V. Committees**

a. There shall be three committees of the Commission: (i) the Case Administration & Estate Committee, (ii) the Chapter 7 Committee, and (iii) the Chapter 13 Committee.

b. Each committee's membership shall consist of such commissioners and other persons as the ABI president-elect shall have appointed.

c. A Commissioner selected by the ABI president-elect shall serve as committee chair. The committee chair shall call and preside over all committee meetings.

d. The Commission may remove a committee member for cause by a vote representing two-thirds of the commissioners.

e. In the event of a vacancy on a committee, the ABI president may, but is not required to, appoint another person to serve as a committee member. In the event of a vacancy in the chair, the ABI president shall designate a Commissioner to serve as committee chair.

f. The Commission may adopt operating procedures for the committees,

g. In the event of overlap, the co-chairs of the Commission, acting in consultation with the Commission reporter, will decide which committee shall consider a particular topic.

## **VI. Voting**

a. The Commission will attempt to work by consensus to the greatest extent possible.

b. When a vote is necessary and except where otherwise specified in these bylaws, the Commission shall act by a majority vote of the commissioners present and voting at a meeting where a quorum exists.

c. If the Commission co-chairs are unable to agree on any decision specified in these bylaws, the ABI president shall break the tie.

## **VII. Final Report**

a. The Commission shall produce a Final Report of its recommendations. The Final Report shall consist of (i) individual recommendations that the Commission will have adopted pursuant to paragraph b, (ii) the explanations of the recommendations in paragraph c, and (iii) the written dissents submitted pursuant paragraph c.

b. It is the intention of the Commission that the committees will produce individual recommendations on various issues. The Commission shall debate and consider each of these recommendations separately. Each recommendation shall be considered to be adopted by the Commission only if approved by a two-thirds vote of the commissioners present and voting at a meeting where a quorum exists.

c. The Commission shall also prepare written explanations of each recommendation to be published with each recommendation. The Commission shall approve the Final Report with recommendations and explanations before its release.

d. Commissioners may prepare a written dissent from any recommendation approved by the Commission. Dissenting commissioners are encouraged to work together and submit joint dissents that concisely explain the reasons for their dissenting views. It is intended that commissioners will submit written dissents only on issues they believe are of particular importance.

#### **VIII. Reporter**

a. The co-chairs shall appoint a reporter for the Commission. The reporter shall work with the committees, coordinate work among the committees, assist the Commission in drafting the Final Report, and perform such other duties as the co-chairs or Commission shall direct.

b. The reporter may be removed for cause by a vote representing two-thirds of the commissioners. If the position of reporter is vacant, the co-chairs shall appoint a new reporter.

c. The co-chairs may appoint a deputy reporter or such other persons as they determine necessary to aid the Commission.

#### **IX. Adoption & Amendment of Bylaws**

a. These bylaws will take effect when adopted by a majority vote of the commissioners voting at a meeting where a quorum is present.

b. After their initial adoption, these bylaws may be amended only by a two-thirds vote of the commissioners voting at a meeting where a quorum is present.