

ABI Commission on Consumer Bankruptcy

Committee Operating Procedures

I. Introduction

The ABI president has charged the Commission on Consumer Bankruptcy Laws (“Commission”) with the following task:

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 fulfill its mission, the Commission has established three committees: (1) Committee on Case Administration & the Estate, (2) Committee on Chapter 7, and (3) Committee on Chapter 13. It is the Commission’s intent that the committees will take the lead in research and drafting the proposals the Commission will consider.

II. Committee Membership

Each committee is composed of approximately fifteen persons, including five members of the Commission. Pursuant to the resolution of the ABI board of directors authorizing the Commission, the ABI president has appointed the members of each committee as well as a chair for each committee.

All commissioners, including the Commission co-chairs and ex-officio Commission members, may participate in any committee meeting, but only committee members may vote on committee matters. Commissioners participating in the meeting of a committee of which they are not a member should be mindful that the decisions of the committee are made only by its members and that the principal discussion should be among the committee members. Each committee may determine the extent to which individuals other than committee members and commissioners may participate in a committee meeting.

A. Ethical Duties

By agreeing to serve, each committee member commits to making his or her best effort to participate in meetings and make meaningful contributions to the committee’s work. Committee members may not delegate their responsibilities. These guidelines are not intended to prevent

committee members from receiving assistance such as research or advice from associates, law clerks, and research assistants.

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.

Committee members should base their work on their best professional judgment as drawn from their personal and professional experiences. Committee members should not take positions merely because they advance the economic or political interests of themselves, their employer, or their clients. When committee members 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 committee member should consider resigning from the committee.

It is recognized that in their professional capacities committee members may have argued for legal outcomes in past or pending litigation or other proceedings that may be affected by the committee's work. If a committee member has argued for a legal outcome in pending litigation that would be affected by matters under consideration by the committee, the committee member should disclose that fact to the committee chair, consistent with Model Rule 6.4. The committee chair 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 committee or Commission. The committee chair may in addition limit the affected committee's member's participation on the particular issue. The committee chair 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.

B. Confidentiality

Each committee's materials, deliberations and work product are work product of the Commission and are to remain confidential until the Commission determines otherwise. By accepting an appointment to and serving on a committee, each committee member agrees to maintain the confidentiality of such materials, deliberations and work product. The Commission will determine which matters and proposals from each committee to include in the Commission's

final report. Committee members may disclose confidential materials, deliberations, or work product only with the express written consent of the Commission co-chairs.

The requirement of confidentiality does not prohibit committee members from:

- discussing substantive issues before the committee with non-committee members to help the committee exercise his or her best professional judgment;
- receiving assistance from associates, law clerks, and research assistants in their organization;
- authoring scholarly works that touch upon substantive issues before the committee so long as the scholarly works do not reproduce confidential committee materials; or
- discussing the work of the Committee or Commission in informal or formal settings so long as the committee member does not reveal confidential committee materials.

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

C. Removal and Replacement of Committee Members

The Commission bylaws provide that the Commission may remove members of committee for cause by a two-thirds vote of the commission.

The ABI president may, but is not required to, appoint new committee members to fill vacancies that may occur by inability to serve, resignation, or removal.

III. Committee Tasks

A. Process and Timeline

Committee recommendations are due to the Commission by December 31, 2017. The Commission will hold hearings on the committee recommendations, debate the recommendations, and approve or disapprove the various recommendations. The reporter will draft the report in the summer of 2018. The goal is for the Commission to issue its report in no later than December 2018.

An overview of the Commission process is attached as an appendix to these Operating Procedures. The process contemplates an iterative and fluid relationship between the committees and the Commission. For example, committees may submit preliminary proposals to the Commission or submit recommendations to the Commission piecemeal. The process

contemplates that the co-chairs of the Commission and the Commission reporter will facilitate communications between the Commission and its committees as well as among the committees.

The end product of each committee will be recommendations on the specific topics it has undertaken to study. The recommendations will be followed by the reasons for each of the committee's recommendations. These may include a summary of dissenting views. Where appropriate, a bibliography or other supporting information may follow the explanation of reasons. The Commission reporter will assist each committee in producing the recommendations.

B. Identification of Topics

At the beginning of its work, each committee will identify a list of topics it intends to cover. The committee structure follows the organization of the Bankruptcy Code. The Chapter 7 and Chapter 13 Committees should focus on topics that tend to appear in cases under those chapters. The Committee on Case Administration and the Estate should focus on overarching consumer issues that arise out of chapters 1, 3, and 5.

The issues facing the bankruptcy system do not necessarily divide obviously across each committee's charge. To prevent duplication of effort, a particular topic will only be studied by one committee. Where the lists of proposed topics from the committees overlap, the Commission co-chairs will act in consultation with the reporter and committee chairs to assign a particular topic to one committee. The lists of topics will be shared among the committees.

C. Meetings, Public Hearing & Other Work

Each committee will meet as their work requires, approximately monthly. Most all meetings will be conducted electronically. Committee chairs will schedule meetings with as much advance notice as practicable and at least forty-eight hours notice for any meeting where a vote will be taken.

Subject to budget availability, each committee is scheduled to have one in-person meeting. At some point during the in-person meeting, the committee shall solicit input and feedback from constituencies that may be affected by the committee's work.

Committee members may apply in advance to the ABI president for approval to request ABI reimbursement for attendance at a committee meeting if the meeting is not held in conjunction with an event such person would otherwise have attended at his or her own expense or would have been reimbursed by their employer or other organization. All ABI reimbursement policies will apply to the request for reimbursement.

D. Decision-making

To the greatest extent possible, all work of the Commission and committees will be done by consensus. Where consensus is not reached on particular issues, the chair of the committee

will call for a committee vote with a majority being necessary to approve the matter under consideration. Because the committee recommendations will summarize any dissenting viewpoints, there will be no formal statements of dissent to the committee recommendations. Individual committee members always may express their views to the Commission outside the committee report.

E. Role of Reporter and Commission Co-Chairs

Each committee should work with the Commission reporter to the greatest extent possible. The Commission reporter will assist with research and drafting of the committee reports as well as help coordinate the work across committees.

Each committee should appoint a committee reporter to assist the Commission reporter in production of its committee recommendations. The committee reporter may be a person on the committee or a non-committee member.

The committee chairs also shall keep the Commission co-chairs informed of the committee's work and help the Commission co-chairs coordinate the work across committees.

Appendix

Process for ABI Commission on Consumer Bankruptcy Laws

