

PROGRAM SUMMARY 6-11-22

By: Gary R. Wallace-Program Summary Committee Chair

cdcbaa Holds Sixth Meeting and MCLE Program of 2022: "Meet the United States Trustee"

On June 11, 2022, the CDCBAA held its sixth members meeting and MCLE program of the year. To help mitigate the spread of COVID-19, the meeting and program were conducted as a live webinar via Zoom video. The program topic was: **"Meet the United States Trustee."** The distinguished panel consisted of Peter Anderson, US Trustee for Region 16, Jack Arutyunyan, Regional Auditor, Jill Sturtevant, Assistant US Trustee, Abram Feuerstein, Assistant US Trustee, Kenneth Miskin, Assistant US Trustee, Kate Bunker, Trial Attorney, and Everett Green, Trial Attorney. CDCBAA former president and current board member Hale Antico moderated.

Mr. Anderson began the lecture by informing the participants that, in the very near future, section 341(a) meetings of creditors will be held remotely via Zoom video on a permanent basis. The exception that requires personal appearances upon request of a trustee or other party in interest will still be available. But Mr. Anderson noted that, based upon his experience so far, those requests will not likely be frequent. Mr. Anderson also acknowledged that debtor audits have not occurred since the COVID-19 pandemic began, and he is not certain when they will resume. He is awaiting further guidance from our DOJ. Mr. Anderson then addressed marijuana cases and noted that the U.S. Trustee's position has not changed: cases that involve assets from a marijuana business are prohibited and will draw a motion to dismiss because such business activities are still viewed as constituting a criminal enterprise under federal law. Mr. Anderson also addressed bifurcated attorney-client fee agreements and explained that, within strict limits, they are permissible.

Ms. Sturtevant spoke about the different roles that attorneys have at the U.S. Trustee's office. For example, case reviews for possible section 707(b) matters are separated into two tiers: tier one is the initial filtering performed usually by law clerks and paralegals; tier two reviews are performed by trial attorneys in conjunction with analysts and/or auditors. Ms. Sturtevant acknowledged that her office receives far more inquiries relative to actions taken because her office is focused on taking action only where truly warranted under the law and that all of the facts of the case, not just a selected few, matter. Ms. Sturtevant emphasized that attorneys can best help their clients avoid section 707 motions by responding promptly to trustee inquiries.

Ms. Bunker discussed the specific statutory grounds for the bringing of section 707(a) and (b) motions to dismiss, and also motions to convert a Chapter 7 to a Chapter 11 under section 706. Mr. Arutyunyan discussed the means test review for consumer cases. He said that every such case is reviewed by a special means test software to determine, *inter alia*, possible discrepancies. Some red flag issues include large deficits between schedules I and J, and the scheduling of deductions for anticipated expenses rather than for actual expenses. Red flags for bad faith motions to dismiss include rapid accumulation of debt, a significant number of recently obtained credit cards, and a lifestyle that requires expenses well in excess of assets and income. Mr. Green spoke regarding adversary proceedings to deny discharges under section 727. Mr. Green noted that, while the U.S. Trustee is generally willing to consider settlements in section 727 cases, the ability to do so is constrained by a strong public policy, as expressed in case law, against allowing a debtor who has committed clear intentional misconduct from simply "buying a discharge."

Mr. Feuerstein spoke on attorney enforcement issues which, he said, take many forms. Under section 329, refunds of attorney compensation can be sought. Rule 9011/Rule 11 is also sometimes utilized. Referrals can be made to the State Bar, but only after the grounds for doing so are carefully analyzed and approved. Mr. Feuerstein provided some examples of matters in which enforcement was commenced. The case *Gordon v. Hines*, involving improper bifurcation, was discussed. Mr. Feuerstein also discussed the court's little known 3-judge disciplinary panel which seeks to address attorney misconduct that is ongoing or has occurred in several different cases before different judges.

Mr. Miskin spoke on several Chapter 11 topics: trial attorney assignments, high profile cases, competence of debtor's counsel, fee applications, disclosure statement issues and Sub-Chapter 5 cases. Mr. Miskin noted that Chapter 11 cases are significantly more complex than Chapter 7 cases. Also, the debtor-in-possession has duties to the estate. Thus, the counsel chosen must have the requisite skill and understanding of such duties. For these reasons, applications to employ counsel are required for Chapter 11 cases, and these applications are scrutinized by the U.S. Trustee. Applications for approval of fees that exceed \$100,000 are required to be submitted in Legal Electronic Data Exchange Standard (LEDES) software format. Disclosure statements will receive objections where there are contradictions between the statement and plan. The lack of an adequate liquidation analysis will also likely draw an objection. As to Sub-Chapter 5 small business filings, Mr. Miskin explained the methods by which his office monitors and regulates compliance with the Code and related rules.

Lastly, Mr. Feuerstein spoke on exculpation clauses and discharges of third parties in Chapter 11 cases, which are largely, but not entirely, prohibited by section 524. The cases *In re Lowenschuss*, 67 F.3d 1394 (9th Cir. 1995) and *Blixeth v. Credit Suisse*, 961 F.3d 1074 (9th Cir. 2020) were discussed.

In addition to the great detail provided by our speakers during the seminar, a lengthy and still-more detailed outline containing further discussion, case authorities and reference links was provided to all registered participants.

Separately, it was noted that Mr. Anderson was first appointed as United States Trustee for Region 16 (the Central District of California) on August 6, 2006, and that he is the longest serving United States Trustee that the Central District has ever had. The length of his tenure is a tribute to his enduring integrity and hard work, as well as an unwavering commitment to utilize his discretion within the bounds of law for the best interests of all people involved in the bankruptcy process.

The next CDCBAA members meeting and Zoom MCLE program will be held on July 9, 2022. The topic will be "**LIENS & MORTGAGES: ISSUES THAT ARISE IN CHAPTER 7, 13 AND 11.**" The speakers will include: Jenny Doling of J. Doling Law PC, Steven Fox of The Fox Law Corporation, Inc., Nicholas Gebelt of Law Offices of Nicholas Gebelt, and Misty Perry Isaacson of Pagter and Perry Isaacson, APLC. We hope you will join us.



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