AMERICAN BANKRUPTCY INSTITUTE

2021 Virtual Annual Spring Meeting

When Mediation Gets Messy: Ethical Dilemmas

Hosted by the Ethics & Professional Compensation and Mediation Committees

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CONCURRENT SESSION

2021

AMERICAN BANKRUPTCY INSTITUTE

ANNUAL SPRING MEETING

When Mediation Gets Messy—Ethical Issues

Joint Program Sponsored by
Mediation Committee and
Ethics and Professional Compensation Committee

Virtual Program
April 20, 2021
3:30 PM

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Materials

American Bankruptcy Institute Mediation Ethics Program for Annual Spring Meeting, 2021

Ethical Issues and Mediation Over a Remote Platform (Prof. B. Summer Chandler)

Checklist for Zoom Test/Practice Session Before Mediation Session (JAMS)

Mediator's Remarks for Joint Opening Session (JAMS)

Mediator's Ethics Guidelines (JAMS)

American Bankruptcy Institute Model Rules for Mediation

Bankruptcy 101 (Hon. Judith K. Fitzgerald (Ret.); Beverly Weiss Manne; Abagale Steidl)

Mediation involves the debtor, secured creditor ("Secured Creditor") who opposes confirmation of chapter 11 plan and contends plan is not feasible, and the prospective purchaser ("Purchaser") of significant assets of the debtor.

I. Preliminary Matters

The parties have agreed that the mediation will be conducted over Zoom. What potential ethical issues need to be considered by the parties in preparation for holding the mediation over Zoom? How might these issues be addressed?

Mediator selected by the parties is a well-known, well-regarded attorney with a reputation for helping parties achieve settlements in difficult situations. Mediator will charge very high fees, commensurate with what is involved in this mediation. A conflict check shows that Mediator's law firm currently represents a party in an unrelated matter that nonetheless could be adversely impacted by any settlement. This potential conflict is reported to Mediator. In addition, Mediator has a small, non-controlling interest in that same party. Mediator is also close friends with the attorney for the debtor, with their respective families often spending time on the weekends together. Mediator has been distracted by the serious, probably fatal illness of a close family member and does not disclose these various potential conflicts. Has the Mediator violated any ethical rules?

II. Issues Arising During the Course of the Mediation

One of the issues in dispute is the value of the collateral securing Secured Creditor's claim. In preparing for the mediation, the creditor submits a pre-mediation statement of little to no substance. At the mediation, the creditor raises new issues at the eleventh hour and appears to misrepresent certain key facts about the parties' relationship and the value of the property securing its claim. What issues does this present and how should opposing counsel respond?

Another issue in dispute is the assets to be included in the sale to Purchaser and the value of those assets. Purchaser wants to include in the sale a litigation claim the estate holds against another entity ("Third Party") that Purchaser intends to acquire in an unrelated transaction. Purchaser already has a term sheet with Third Party negotiated by Purchaser's attorney but neither discloses that information to Debtor or Mediator. Litigation against Third Party would likely be successful and make funds available to distribute to creditors. Mediation results in a settlement that will transfer the litigation claim to Purchaser. Has the Purchaser's attorney violated any ethical rules?

III. Post-Mediation Matters

Towards the end of the case, counsel for the chapter 11 trustee files an application for compensation, to which the litigant objects. Can mediation communications and documents be used later in proceedings in relation to request for attorney's fees and costs?

Ethical Issues and Mediation Over a Remote Platform

B. Summer Chandler[1]

Many components of legal practice that used to occur in live settings – including everything from depositions to trials – are now routinely being held over remote systems of asynchronous audio and visual communication, such as Zoom or WebEx (each a "**Remote Platform**"). Mediation is but one example of an activity that now largely occurs via a Remote Platform. This paper will note just some of the ethical challenges and questions that arise in connection with mediation over a Remote Platform.[2]

1. Diligence and Competence in Representation

Lawyers have a responsibility to provide their clients with "competent representation.[3] To maintain the necessary level of competence, lawyers, "should keep abreast of …. the benefits and risks associated with relevant technology…."[4] In addition, a lawyer is obligated to, " act with reasonable diligence …. in representing a client."[5] In the current climate, to competently and diligently represent their clients' interests. lawyers must be familiar with the benefits and, perhaps more importantly, the risks that are associated with mediating via a Remote Platform.

[1] B. Summer Chandler is a Visiting Assistant Professor of Law at the Southern University Law Center. Please do not copy, redistribute, or use without permission. Views expressed are solely the views of the author.

[2] This paper is not intended to provide a comprehensive list of the multiple of ethical challenges that may exist in the context of mediation held over a Remote Platform. In addition, this paper will refer to the Model Rules of Professional Conduct, issued by the American Bar Association. It will also refer to the JAMS Mediators Ethics Guidelines and the American Bankruptcy Institute's Model Ethics Rules for Mediators. The comments and observations in this paper are made with reference to these model rules and guidelines. Be sure to check the state and local rules and guidelines that may apply to any particular matter in which you are involved.

[3] Model R. of Prof. Conduct 1.1.

[4] Model R. of Prof. Conduct 1.1, cmt. 8.

[5] Model R. of Prof. Conduct 1.3.

2. Inadvertent Disclosures and Protecting Confidentiality

Absent a limited set of circumstances, lawyers have a responsibility to maintain the confidentiality of, "information relating to the representation of a client."[6] This requirement includes the obligation to, "make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client."[7] In addition, lawyers are to take steps to keep property of their clients, "appropriately safeguarded."[8]

Mediators are also required to maintain the confidentiality of information shared and discussed in the mediation.[9] "A mediator should not disclose confidential information without permission of all parties or unless required by law, court rule or other legal authority."[10] Further, when a confidential settlement agreement is reached in a mediation, all parties to the mediation are interested in preserving its confidentiality.

Mediating via a Remote Platform creates a host of potential considerations with respect to maintaining confidences, whether as between an attorney and her client, or the mediator and the parties engaged in mediation.

Secure Internet Connection –Remote Platforms likely offer some type of encryption protection for content that is exchanged over these platforms. They are, however, unlikely to assure an experience that is fully encrypted.[11] As such, all

[6] Model R. of Prof. Conduct 1.6(a).
[7] Model R. of Prof. Conduct 1.6(c).
[8] Model R. of Prof. Conduct 1.5(a).
[9] ABI Model Ethics Rules for Mediators, R. 1(d) ("The mediator and the Mediation Participants are prohibited from divulging, outside of the mediation, any oral or written information disclosed by the Mediation Participants or by witnesses in the course of the mediation").
[10] JAMS, Mediators Ethics Guidelines, p. 3.
[11] *See, e.g.*, Zoom Encryption for meetings, https://support.zoom.us/hc/en-us/articles/201362723-Encryption-for-meetings (last visited February 28, 2021).

participants should use a secure connection for accessing a Remote Platform for purposes of mediation and should instruct clients to only use a secure network.

Screen Sharing – Remote Platforms generally allow the participants to share their screens with other participants, unless that functionality is disabled by the host. If screen sharing is permitted and a participant chooses to use it, the participant should take these steps to help avoid inadvertent disclosures to other participants:

- Close email.
- Close messaging/text applications.
- Keep your desktop clear.
- Close browser tabs.
- Close documents you do not intend to share.

Chat Messaging – Unless the host disables this feature, Remote Platforms generally allow the participants to communicate via written messages to one another. A message may be sent to a specific party as a private message, or it may be sent to all participants. To avoid inadvertently sending a message to the wrong participant (or, perhaps worse, to all participants) it is probably best to avoid using chat or private message functions.

Breakout Rooms – Some Remote Platforms, such as Zoom and WebEx, permit the host of the meeting to create breakout rooms that allow participants to be broken up into smaller groups and separated into separate "rooms" or "sessions." In the context of mediation, this function permits the mediator to segregate lawyers and their respective clients each into their own rooms. The mediator is then able to move between the various "rooms," meeting separately with each lawyer and their client or clients. In an effort to protect the confidentiality of each party, a separate "room" should be created for each party (rather than having a party stay in the "main" meeting room). In

addition, a mediator should consider announcing the mediator's entry into a breakout room when she enters the room.

Surroundings – To state an obvious point, mediating over a Remote Platform means that the mediation will occur wherever a participant is located, as opposed to being held in a single, neutral location. As such, it allows other participants to view the surroundings of the other participants. Files, books, and binders that are in view of the camera will be in view of the other participants. Participants must be mindful of this fact and take care not to allow confidential or sensitive information to be in the line of sight of their cameras.

Unauthorized Parties – Remote Platforms create opportunities for unauthorized parties to observe or even interfere with a mediation. The host should consider using privacy and control settings that allow the host to control who is able to enter the meeting – such as creating a unique password for the meeting and "locking" the meeting when all invited participants have joined.

Because participants are not physically located in the same space, mediation over a Remote Platform also raises the possibility that a party may permit uninvited parties to observe the mediation. Consider asking all parties to affirm as part of a confidentiality agreement that only authorized individuals will be permitted to observe or otherwise participate in the mediation and that reasonable steps have been taken to protect against an unauthorized person from hearing or seeing the mediation.

Lawyers are to conduct themselves in a manner that maintains the integrity of the legal profession. To uphold this requirement, an attorney cannot "engage in conduct

involving dishonesty, fraud, deceit or misrepresentation."[12] As such, an attorney would be obligated to truthfully report the parties who are observing or otherwise participating in a mediation and should admonish the attorney's client to do the same.

Collection of Data – Remote Platforms gather certain information in connection with providing their services. For example, the Zoom Privacy Statements states that it receives certain "customer content" and uses that customer content in connection with providing its services. The Zoom Policy Statement provides that, customer content "is the 'in-session' information you give us directly through your use of the Services, such as meeting recordings, files, chat logs, and transcripts, and any other information uploaded while using the Services."[13] The policy statement notes that a meeting host can set privacy options that limit access to certain components of the Zoom services but that "no security measures are perfect or impenetrable and [Zoom is] not responsible for circumvention of any security measures contained on the Services."[14] It then cautions that users, "should be cautious about the access you provide to others when using the Services, and the information you choose to share when using the Services."[15]

To try to limit the "content" that is being shared with the Remote Platform that is being used (and potentially being accessed by other parties), participants should focus on limiting the services that are being used. In addition to the points noted above, consider taking the following steps if you are the host (or asking the host to take the following steps if you are not):

[12] Model R. of Prof. Conduct 8.4(c).
[13] Zoom Policy Statement, last updated August 2020, https://zoom.us/privacy (last visited February 28, 2021).
[14] *Id*.
[15] *Id*.

- Prohibit recording over the Remote Platform.
- Prohibit screen shots.
- Have participants affirm they will not record or take screen shots.
- Prohibit closed captioning (of course, accommodations will need to be addressed, if applicable).
- Prohibit private messaging or chatting.
- Prohibit or limit screen sharing.

3. Unauthorized Practice of Law

Mediating a dispute over a remote platform has enhanced the ease with which an attorney or mediator may provide services in multiple jurisdictions. Of course, unless an exception applies to a given situation, lawyers are prohibited from practicing law in a jurisdiction to which they are not admitted to practice law.[16] Lawyers, however, may provide legal services on a temporary basis if such services are, "in or reasonably related to a pending or potential .... mediation .... in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission."[17]

Mediators should also be mindful of the potential for the unauthorized practice of law. The JAMS Mediators Ethics Guidelines caution that:

> A mediator should make an effort to keep abreast of developments within the mediator's jurisdiction concerning what constitutes the practice of law. Different bar associations have issued conflicting opinions about whether and when a mediator engages in the practice of law, and

[16] Model R. of Prof. Conduct 5.5.
[17] Model R. of Prof. Conduct 5.5(c)(3).

> certain states or courts have rules regarding how and in what manner a mediator may evaluate the merits of a dispute.[18]

Working remotely also raises the question of what exactly it means to say that one is practicing law "in a jurisdiction." If a lawyer is physically located in a jurisdiction in which the lawyer is not admitted to practice, but providing legal services (whether as an attorney or mediator) for a matter that is pending in a jurisdiction to which the lawyer is admitted, is the lawyer practicing law "in" a jurisdiction in which they are not admitted?

The American Bar Association ("**ABA**") addressed this question in Formal Opinion 495. It concluded, "If a particular jurisdiction has made the determination, by statute, rule, case law, or opinion, that a lawyer working remotely while physically located in that jurisdiction constitutes the unauthorized or unlicensed practice of law, then Model Rule 5.5(a) also would prohibit the lawyer from doing so."[19] Absent such a determination, "the lawyer may practice from home (or other remote location) whatever law(s) the lawyer is authorized to practice by the lawyer's licensing jurisdiction, as they would from their office in the licensing jurisdiction."[20]

Conclusion

This paper has noted but a few of the interesting and challenging ethical issues that are implicated when Remote Platforms are used to conduct a mediation. Although conducting mediations over Remote Platforms raises a variety of potential and actual ethical issues, adjusting our practices to allow for mediations to be conducted in this

[18] JAMS, Mediators Ethics Guidelines, p. 5.
[19] ABA, Formal Op. 495.
[20] *Id*.

manner has allowed mediations, and the settlements they encourage, to continue …even in the midst of a pandemic.

March 11, 2021

Hon. Joan N. Feeney (Ret.)
JAMS NEUTRAL

CHECKLIST FOR ZOOM TEST/PRACTICE SESSION BEFORE MEDIATION SESSION

1. Introduce all participants including Case Moderator and discuss roles. Exchange cell numbers.

2. Identify any problems with connections, visual, and & audio.

3. Explain practice agenda: a) ground rules/technology, b) test breakout rooms, c) final questions.

4. As this is a new process, discuss need for patience & flexibility.

5. Confirm date and start time considering time zones if different, and need to use different link than today's practice.

6. Need for lunch breaks, other scheduling issues. Ask participants stay connected even during breaks. Use stop video or audio.

7. Discuss Zoom features: Gallery view, mute, stop video, chat, ask for help.

8. Ground rules: confidentiality, do not share link, no recording of session.

9. Tips about camera view, lighting, etc.

10. We will start in brief joint session or proceed directly to breakouts. Do not not draw inferences from amount of time in breakouts. Run through breakout rooms, brief visits of breakout rooms needed.

11. Options for documenting agreement: email or text drafts, signatures or email confirmation.

12. Reassemble for final questions.

March 11, 2021

Hon. Joan N. Feeney (Ret.), JAMS Neutral

MEDIATOR'S REMARKS FOR JOINT OPENING SESSION AT ZOOM MEDIATION

1. We are involved in a new process and there may be technical glitches. Ask for everyone's flexibility and patience. We will not be recording this session because of confidentiality agreement.

2. Exchange cell phone numbers. Please call or text me if you have a problem or need to get in touch. Contact me by cell or email if you experience problems. I will seek assistance of the Moderator, as needed. If you do get disconnected, you can log back on by use of the link in the invitation email. You will need to call or text me when you rejoin because I will have to let you out of the waiting room. If you lose computer connection, you can rejoin by phone by using the telephone number in the invitation email.

3. I have the ability to move people in and out of breakout rooms. Describe who is where in each room. There is a separate room for attorneys. I will text you or send a chat message to give you advance warning each time I am about to show up in your breakout session.

4. If you need to reach me when you are in breakout session, you have 3 choices: 1) click on the "ask for help" button; 2) text me; or 3) call me on my cell. There may be a time when I ask to speak separately with an attorney, or an attorney wishes to speak separately with me. Or the attorneys for different parties may want to speak directly with one another. I have extra breakout rooms available for that purpose.

5. Discuss time and duration of lunch break. Please remain connected to Zoom throughout the mediation. You can use Stop Video and Mute if you want visual and audio to be cut off.

6. Counsel has signed the confidentiality agreement for each party, so the usual ground rules for mediation confidentiality apply. When we speak in private, if you tell me something you want kept in confidence, please let me know.

7. If we reach a settlement agreement by the end of this session, I will bring the attorneys together in a separate breakout room to discuss how we are going to document the agreement or draft a term sheet.

8. I am going to place you all in breakout rooms at this time. I then will start meeting with you in private caucus in the following order.

Mediators Ethics Guidelines

Introduction

The purpose of these Ethics Guidelines is to provide basic guidance to JAMS mediators regarding ethical issues that may arise during or related to the mediation process. Mediation is a voluntary, non-binding process using a neutral third party to help the parties reach a mutually beneficial resolution of their dispute. A mediator helps the parties reach a resolution by facilitating communication, promoting understanding, assisting them in identifying and exploring issues, interests and possible bases for agreement, and in some matters, helping parties evaluate the likely outcome in court or arbitration if they cannot reach settlement through mediation.

Mediation is by its nature a fluid and flexible process. JAMS mediators are not expected to adhere to any one process or approach, and are encouraged to rely on their creativity and experience to tailor each mediation as much as appropriate to meet the needs of the participants.

These Guidelines are national in scope and are necessarily general. They are not intended to supplant applicable state or local laws or rules. All JAMS mediators should be aware of applicable state statutes or court rules that may apply to the mediations they are conducting. In the event that these Guidelines are inconsistent with such statutes or rules, the mediators must comply with the applicable law.

Attorney mediators in particular should also be aware of state-specific rulings or guidance as to whether and in what circumstances mediation may be considered the practice of law. These rulings may have an impact on a mediator's practice in such respects as advertising and co-mediating with non-attorneys. In addition, mediators who are former judges should be aware of any state ethical standards or canons of judicial conduct regulating or guiding their efforts as mediators. Other professionals, such as licensed psychologists, also may have similar standards of conduct that may affect their mediation practice.

JAMS strongly encourages its mediators to confront directly any ethical issues that arise in their cases as soon as the issue becomes apparent, and to seek advice on how to resolve such issues from the Regional Management Team.

I. A MEDIATOR SHOULD ENSURE THAT ALL PARTIES ARE INFORMED ABOUT THE MEDIATOR'S ROLE AND NATURE OF THE MEDIATION PROCESS, AND THAT ALL PARTIES UNDERSTAND THE TERMS OF SETTLEMENT.

A mediator should ensure that all parties understand and agree to mediation as a process, the mediator's role in that process and all parties' relationship to the mediator. The parties should also understand the particular procedures the mediator intends to employ, including whether and in what manner the mediator may help the parties evaluate the likely outcome of the dispute in court or arbitration if they cannot reach settlement through mediation. In addition, a mediator should be satisfied that the parties have considered and understood the terms of any settlement, and should, if appropriate, advise the parties to seek legal or other specialized advice.

If the mediator perceives that a party is unable to give informed consent to participation in the process or to the terms of settlement due to, for example, the impact of a physical or mental impairment, the process should not continue until the mediator is satisfied that such informed consent has been obtained from the party or the party's duly authorized representative.

In the event that, prior to or during a mediation session, it becomes appropriate to discuss the possibility of combining mediation with binding arbitration, the mediator should explain how a mediator's role and relationship to the parties may be altered, as well as the impact such a shift may have on the disclosure of information to the mediator. The parties should be given the opportunity to select another neutral to conduct the arbitration procedure.

II. A MEDIATOR SHOULD PROTECT THE VOLUNTARY PARTICIPATION OF EACH PARTY.

The right of the parties to reach a voluntary agreement is central to the mediation process. Consequently, a mediator should act and conduct the process in ways that maximize its voluntariness.

In most cases that are not court-ordered, parties to the mediation process arrive willing and able to engage in assisted negotiation. On infrequent occasions, however, a mediator may perceive that a party is being forced into and/or through the process, for example, by a family member or representative. In that event, a mediator should explore carefully with that party and the other parties, within the bounds of discretion and confidentiality, whether the mediation process should proceed, and, in any case, strive to ensure that the concerns of the reluctant party regarding the process are fully addressed.

Court-ordered mediation often carries an aspect of involuntariness into the process. A mediator should be sensitive to this dynamic and assure the parties that although they have been ordered to attend the mediation, a settlement can be reached only if it is to their mutual satisfaction.

III. A MEDIATOR SHOULD BE COMPETENT TO MEDIATE THE PARTICULAR MATTER.

A mediator should have sufficient knowledge of relevant procedural and substantive issues to be effective. It is the mediator's responsibility to prepare before the mediation session by reviewing any statements or documents submitted by the parties. A mediator should refuse to serve or withdraw from the mediation if the mediator becomes physically or mentally unable to meet the reasonable expectations of the parties.

IV. A MEDIATOR SHOULD MAINTAIN THE CONFIDENTIALITY OF THE PROCESS.

> It is crucial that the mediator and all parties have a clear understanding as to confidentiality before the mediation begins. Before a mediation session begins, a mediator should explain to all parties (a) any applicable laws, rules or agreements prohibiting disclosure in subsequent legal proceedings of offers and statements made and documents produced during the session, and (b) the mediator's role in maintaining confidences within the mediation and as to third parties.
>
> A mediator should not disclose confidential information without permission of all parties or unless required by law, court rule or other legal authority. A mediator must not use confidential information acquired during the mediation to gain personal advantage or advantage for others, or to affect adversely the interests of others. If the mediation is being conducted under rules or laws that require disclosure of certain information, a mediator should so notify the parties prior to beginning the mediation session. In addition, a mediator's notes, the parties' submissions and other documents containing confidential or otherwise sensitive information should be stored in a reasonably secure location and may be destroyed 90 days after the mediation has been completed or sooner if all parties so request or consent.

V. A MEDIATOR SHOULD CONDUCT THE PROCESS IMPARTIALLY.

A mediator should remain impartial throughout the course of the mediation. A mediator should be aware of and avoid the potential for bias based on the parties' backgrounds, personal attributes, or conduct during the session, or based on any pre-existing knowledge of or opinion about the merits of the dispute being mediated. A mediator should endeavor to provide a procedurally fair process in which each party is given an adequate opportunity to participate. If a mediator becomes incapable of maintaining impartiality, the mediator should withdraw promptly.

A mediator should disclose any information that reasonably could lead a party to question the mediator's impartiality. A mediator may proceed with the process unless a party objects to continuing service. A mediator should withdraw if a conflict of interest exists that casts serious doubt on the integrity of the process.

After a mediation is completed, a mediator should refrain from any conduct involving a party, insurer or counsel to the mediation that reasonably would cast doubt on the integrity of the mediation process, absent disclosure to and consent by all parties to the mediation. This does not preclude the mediator from serving as a mediator or in another dispute resolution capacity with a party, insurer or counsel involved in the prior mediation.

A mediator should exercise caution in accepting items of value, including gifts or payments for meals, from a party, insurer or counsel to a mediation during or after a mediation, particularly if the items are accepted at such a time and in such a manner as to cast doubt on the integrity of the mediation process.

A mediator should also avoid conflicts of interest in recommending the services of other professionals. If a mediator is unable to make a personal recommendation without creating a potential or actual conflict of interest, the mediator should so advise the parties and refer them to a professional referral service or association.

The JAMS Conflict of Interest Policy provides additional information regarding restricted conduct and should be adhered to by a JAMS mediator.

VI. A MEDIATOR SHOULD REFRAIN FROM PROVIDING LEGAL ADVICE.

A mediator should ensure that the parties understand that the mediator's role is that of neutral intermediary, not that of representative of or advocate for any party. A mediator should not offer legal advice to a party. If a mediator offers an evaluation of a party's position or of the likely outcome in court or arbitration, or offers a recommendation with regard to settlement, the mediator should ensure that the parties understand that the mediator is not acting as an attorney for any party and is not providing legal advice.

A mediator should be particularly sensitive to role differences if any party is unrepresented by counsel at the mediation, and should explain carefully the limitations of the mediator's role and obtain a written waiver of representation from each unrepresented party. If a mediator assists in the preparation of a settlement agreement and if counsel for any party is not present, the mediator should advise each unrepresented party to have the agreement independently reviewed by counsel prior to executing it.

A mediator should make an effort to keep abreast of developments within the mediator's jurisdiction concerning what constitutes the practice of law. Different bar associations have issued conflicting opinions about whether and when a mediator engages in the practice of law, and certain states or courts have rules regarding how and in what manner a mediator may evaluate the merits of a dispute.

VII. A MEDIATOR SHOULD WITHDRAW UNDER CERTAIN CIRCUMSTANCES.

A mediator should withdraw from the process if the mediation is being used to further illegal conduct, or for any of the reasons set forth above: lack of informed consent, a conflict of interest that has not or cannot be waived, a mediator's inability to remain impartial, or a mediator's physical or mental disability. In addition, a mediator should be aware of the potential need to withdraw from the case if procedural or substantive unfairness appears to have undermined the integrity of the mediation process.

VIII. A MEDIATOR SHOULD AVOID MARKETING THAT IS MISLEADING AND SHOULD NOT GUARANTEE RESULTS.

A mediator should ensure that any advertising or other marketing conducted on the mediator's behalf is truthful. A mediator should not guarantee results, especially if such guarantee could be perceived as favoring one type of disputant or industry over another.

For more information, please call your local JAMS office at 1-800-352-5267.

Why JAMS?

JAMS mediators and arbitrators successfully resolve cases ranging in size, industry and complexity, typically achieving results more efficiently and cost effectively than through litigation. JAMS neutrals are skilled in alternative dispute resolution (ADR) processes including mediation, arbitration, special master, discovery referee, project neutral, and dispute review board work.

Model Rule 1
Mediation

(a) Types of Matters Subject to Mediation. The court may assign to mediation any dispute arising in a bankruptcy case, whether or not any adversary proceedings or contested matters is presently pending with respect to such dispute. Parties to an adversary proceeding, contested matter and a dispute not yet pending before the court, may also stipulate to mediation, subject to court approval.

(b) Effects of Mediation on Pending Matters. The assignment of a matter to mediation does not relieve the parties to that matter from complying with any other court orders or applicable provisions of the U.S. Code, the Bankruptcy Rules or these Local Rules. Unless otherwise ordered by the court, the assignment to mediation does not delay or stay discovery, pretrial hearing dates or trial schedules. Any party may seek such delay or stay, and the court, after notice and hearing, may enter appropriate orders.

(c) The Mediation Conference.

(i) Informal Mediation Discussions. The mediator shall be entitled to confer with any or all a) counsel, b) pro se parties, c) parties represented by counsel, with the permission of counsel to such party and d) other representatives and professionals of the parties, with the permission of a pro se party or counsel to a party, prior to, during or after the commencement of the mediation conference (the "Mediation Process"). The mediator shall notify all Mediation Participants of the occurrence of all such communications, but no advance notice or permission from the other Mediation Participants shall be required. The topic of such discussions may include all matters which the mediator believes will be beneficial at the mediation conference or the conduct of the Mediation Process, including, without limitation, those matters which will ordinarily be included in a Submission under Local Rule 1(c)(iii). . All such discussions held shall be subject to the confidentiality requirements of subsection (d) of this Local Rule 1.

(ii) Time and Place of Mediation Conference. After consulting with the parties and their counsel, as appropriate, the mediator shall schedule a time and place for the mediation conference that is acceptable to the parties and the mediator. Failing agreement of the parties on the date and location for the mediation conference, the mediator shall establish the time and place of the mediation conference on no less than twenty one (21) days' written notice to all counsel and pro se parties. The mediation conference may be concluded after any number of sessions, all of which shall be considered part of the mediation conference for purposes of this Local Rule.

(iii) Submission Materials. Each Mediation Participant (as defined below) shall submit directly to the mediator such materials (the "Submission") as are directed by the mediator after consultation with the Mediation Participants. The mediator may confer with the Mediation Participants, or such of them as the mediator determines appropriate, to discuss what materials would be beneficial to include in the Submission, the timing of the Submissions and what portion of such materials, if any, should be provided to the mediator but not to the other parties. No Mediation Participant shall be required to provide its Submission, or any part thereof, to another party without the consent of the submitting Mediation Participant. The Submission shall not be filed with the

Model Rule 1
Mediation

court and the court shall not have access to the Submission. A Submission shall ordinarily include an overview of the facts and law, a narrative of the strengths and weaknesses of a party's case, the anticipated cost of litigation, the status of any settlement discussions and the perceived barriers to a negotiated settlement.

(iv) Attendance at Mediation Conference.

(A) Persons Required to Attend. Unless excused by the mediator upon a showing of hardship, or if the mediator determines that it is consistent with the goals of the mediation to excuse such party, the following persons (the " Mediation Participants") must attend the mediation conference personally:

1) Each party that is a natural person;

2) If the party is not a natural person, including a governmental entity, a representative who is not the party's attorney of record and who has authority to negotiate and settle the matter on behalf of the party, and prompt access to any board, officer, government body or official necessary to approve any settlement that is not within the authority previously provided to such representative;

3) The attorney who has primary responsibility for each party's case;

4) Other interested parties, such as insurers or indemnitors, whose presence is necessary, or beneficial to, reaching a full resolution of the matter assigned to mediation, and such attendance shall be governed in all respects by the provisions of this subparagraph (c)(iv) of this Local Rule 1.

(B) Persons Allowed to Attend. Other interested parties in the bankruptcy case who are not direct parties to the dispute, i.e., representatives of a creditors committees, may be allowed to attend the mediation conference, but only with the prior consent of the mediator and the Mediation Participants, who will establish the terms, scope and conditions of such participation. Any such interested party that does participate in the mediation conference will be subject to the confidentiality provisions of Local Rule 1(d) and shall be a Mediation Participant.

(C) Failure to Attend. Willful failure of a Mediation Participant to attend any mediation conference, and any other material violation of this Local Rule, may be reported to the court by any party, and may result in the imposition of sanctions by the court. Any such report shall comply with the confidentiality requirement of Local Rule 1(d).

Model Rule 1
Mediation

(v) Mediation Conference Procedures. After consultation with the Mediation Participants or their counsel, as appropriate, the mediator may establish procedures for the mediation conference.

(vi) Settlement Prior to Mediation Conference. In the event the parties reach an agreement in principle after the matter has been assigned to mediation, but prior to the mediation conference, the parties shall promptly advise the mediator in writing. If the parties agree that a settlement in principle has been reached, the mediation conference shall be continued (to a date certain or generally as the mediator determines) to provide the parties sufficient time to take all steps necessary to finalize the settlement. As soon as practicable, but in no event later that thirty (30) days after the parties report of an agreement in principle, the parties shall confirm to the mediator that the settlement has been finalized. If the agreement in principle has not been finalized, the mediation conference shall go forward, unless further extended by the mediator, or by the court.

(d) Confidentiality of Mediation Proceedings.

(i) Protection of Information Disclosed at Mediation. The mediator and the Mediation Participants are prohibited from divulging, outside of the mediation, any oral or written information disclosed by the Mediation Participants or by witnesses in the course of the mediation (the "Mediation Communications"). No person, including without limitation, the Mediation Participants and any person who is not a party to the dispute being mediated or to the Mediation Process (a "Person") , may rely on or introduce as evidence in any arbitral, judicial or other proceeding, evidence pertaining to any aspect of the Mediation Communications, including but not limited to: (A) views expressed or suggestions made by a party with respect to a possible settlement of the dispute; (B) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator; (C) proposals made or views expressed by the mediator; (D) statements or admissions made by a party in the course of the mediation; and (E) documents prepared for the purpose of, in the course of, or pursuant to the mediation. In addition, without limiting the foregoing, Rule 408 of the Federal Rules of Evidence, any applicable federal or state statute, rule, common law or judicial precedent relating to the privileged nature of settlement discussions, mediations or other alternative dispute resolution procedures shall apply. Information otherwise discoverable or admissible in evidence does not become exempt from discovery, or inadmissible in evidence, merely by being used by a party in the mediation. However, except as set forth in the previous sentence, no Person shall seek discovery from any of the Mediation Participants with respect to the Mediation Communications.

(ii) Discovery from Mediator. The mediator shall not be compelled to disclose to the court or to any Person outside the mediation conference any of the records, reports, summaries, notes, Mediation Communications or other documents received or made by the mediator while serving in such capacity. The mediator shall not testify or be compelled to testify in regard to the mediation or the Mediation Communications in connection with any arbitral,

judicial or other proceeding. The mediator shall not be a necessary party in any proceedings relating to the mediation. Nothing contained in this paragraph shall prevent the mediator from reporting the status, but not the substance, of the mediation effort to the court in writing, from filing a final report as required herein, or from otherwise complying with the obligations set forth in this Local Rule 1.

(iii) Protection of Proprietary Information. The Mediation Participants and the mediator shall protect proprietary information. Proprietary information should be designated as such by the Mediation Participant seeking such protection, in writing, to all Mediation Participants, prior to any disclosure of such proprietary information. Such designation shall not require the disclosure of the proprietary information, but shall include a description of the type of information for which protection is sought. Any disputes as to the protection of proprietary information may be decided by the court.

(iv) Preservation of Privileges. The disclosure by a party of privileged information to the mediator does not waive or otherwise adversely affect the privileged nature of the information.

(e) Recommendations by Mediator. The mediator is not required to prepare written comments or recommendations to the parties. Mediators may present a written settlement recommendation memorandum to parties, or any of them, but not to the court.

(f) Post-Mediation Procedures.

(i) Filings by the Parties. If an agreement in principle for settlement is reached (even if the agreement in principle is subject to the execution of a definitive settlement agreement or court approval, and is not binding before that date) during the mediation conference, one or more of the Mediation Participant shall file a notice of settlement or, where required, a motion and proposed order seeking court approval of the settlement.

(ii) Mediator's Certificate of Completion. After the conclusion of the mediation conference (as determined by the mediator), the mediator shall file with the court a certificate in the form provided by the court ("Certificate of Completion") notifying the court about whether or not a settlement has been reached. Regardless of the outcome of the Mediation Process, the mediator shall not provide the court with any details of the substance of the conference or the settlement, if any.

(iii) If the Agreement in Principle is not completed. If the parties are not able or willing to consummate the agreement in principle that was reached during the mediation conference, and the agreement in principal never becomes a binding contract, the substance of the proposed settlement shall remain confidential and shall not be disclosed to the court by the mediator or any of the Mediation Participants.

(g) Withdrawal from Mediation. Any matter assigned to mediation under this Local Rule may be withdrawn from mediation by the court at any time. Any Mediation Participant may file a motion with the court seeking authority to withdraw from the mediation or

seeking to withdraw any matter assigned to mediation by court order from such mediation.

(h) Termination of Mediation. Upon the filing of a mediator's Certificate of Completion under Local Rule 1(f) (ii) or the entry of an order withdrawing a matter from mediation under Local Rule 1(g) the mediation will be deemed terminated and the mediator excused and relieved from further responsibilities in the matter without further order of the court. If the Mediation Process does not result in a resolution of all of the disputes in the assigned matter, the matter shall proceed to trial or hearing under the court's scheduling orders. However, the court shall always have the discretion to reinstitute the Mediation Process if the court determines that such action is the most appropriate course under the circumstances. In such event, Local Rule 1 and Local Rule 2 shall apply in the same manner as if the mediation were first beginning pursuant to Local Rule 1(a).

(i) Applicability of Rules to a Particular Mediation. The court may, upon request of one or more parties to the mediation, or on the court's own motion, declare that one or more of provisions of this Local Rule may be suspended or rendered inapplicable with respect to a particular mediation except Local Rule 1(d) and Local Rule 1(j). Otherwise these Local Rules shall control any mediation related to a case under the Bankruptcy Code.

(j) Immunity. Aside from proof of actual fraud or other willful misconduct, mediators shall be immune from claims arising out of acts or omissions incident or related to their service as mediators appointed by the bankruptcy court. See, Wagshal v. Foster, 28 F.3d. 1249 (D.C. Cir. 1994). Appointed mediators are judicial officers clothed with the same immunities as judges and to the same extent set forth in Title 28 of the United States Code.

Model Rule 2

Mediator Qualifications and Compensation

(a) Register of Mediators. The Clerk shall establish and maintain a register of persons (the "Register of Mediators") qualified under this Local Rule and designated by the Court to serve as mediators in the Mediation Program. The Chief Bankruptcy Judge shall appoint a Judge of this Court, the Clerk or a person qualified under this Local Rule who is a member in good standing of the Bar of the State of _____ to serve as the Mediation Program Administrator. Aided by a staff member of the Court, the Mediation Administrator shall receive applications for designation to the Register, maintain the Register, track and compile reports on the Mediation Program and otherwise administer the program.

(b) Application and Qualifications. Each applicant shall submit to the Mediation Program Administrator a statement of professional qualifications, experience, training and other information demonstrating, in the applicant's opinion, why the applicant should be designated to the Register. The applicant shall submit the statement substantially in compliance with Local Form _____. The statement also shall set forth whether the applicant has been removed from any professional organization, or has resigned from any professional organization while an investigation into allegations of professional misconduct was pending and the circumstances of such removal or resignation. This statement shall constitute an application for designation to the Mediation Program. Each applicant shall certify that the applicant has completed appropriate mediation training or has sufficient experience in the mediation process. To have satisfied the requirement of “appropriate mediation training” the applicant should have successfully completed at least 40 hours of mediation training sponsored by a nationally recognized bankruptcy organization. To have satisfied the requirement of “sufficient experience in the mediation process” the applicant must have at least ten (10) years of professional experience in the insolvency field.

(c) Court Certification. The Court in its sole and absolute discretion, on any feasible basis shall grant or deny any application submitted under this Local Rule. If the Court grants the application, the applicant's name shall be added to the Register, subject to removal under these Local Rules.

(i) Reaffirmation of Qualifications. The Mediation Program Administrator may request from each applicant accepted for designation to the Register to reaffirm annually the continued existence and accuracy of the qualifications, statements and representations made in the application. If such a request is made and not complied with within one month of such request, the applicant shall be removed from the Register until compliance is complete (the “Suspension of Eligibility”). After the passage of six months from the Suspension of Eligibility, if compliance is not complete, the applicant shall be permanently removed from the Register and may only be placed on the Registry by reapplying in the manner set forth pursuant to the provisions of subsection (b) of this Local Rule 2.

(d) Removal from Register. A person shall be removed from the Register either at the person's request or by Court order entered on the sole and absolute determination of the Court. If removed by Court order, the person shall be eligible to file an application for reinstatement after one year.

Model Rule 2
Mediator Qualifications and Compensation

(e) Appointment.

(i) Selection. Upon assignment of a matter to mediation in accordance with these Local Rules and unless special circumstances exist, as determined by the Court, the parties shall select a mediator. If the parties fail to make such selection within the time frame as set by the Court, then the Court shall appoint a mediator. A mediator shall be selected from the Register of Mediators, unless the parties stipulate and agree to a mediator not on the Register of Mediators.

(ii) Inability to Serve. If the mediator is unable to or elects not to serve, he or she shall file and serve on all parties, and on the Mediation Program Administrator, within seven (7) days after receipt of notice of appointment, a notice of inability to accept the appointment. In such event an alternative mediator shall be selected in accordance with the procedures pursuant to Subsection (e)(i) of this Local Rule 2.

(iii) Disqualification.

(A) Disqualifying Events. Any person selected as a mediator may be disqualified for bias or prejudice in the same manner that a Judge may be disqualified under 28 U.S.C. § 44. Any person selected as a mediator shall be disqualified in any matter where 28 U.S.C. § 455 would require disqualification if that person were a Judge.

(B) Disclosure. Promptly after receiving notice of appointment, the mediator shall make an inquiry sufficient to determine whether there is a basis for disqualification under this Local Rule. The inquiry shall include, but shall not be limited to, a search for conflicts of interest in the manner prescribed by the applicable rules of professional conduct for attorneys and by the applicable rules pertaining to the profession of the mediator. Within ten (10) days after receiving notice of appointment, the mediator shall file with the Court and serve on the parties either (1) a statement disclosing to the best of the applicant's knowledge all of the applicant's connections with the parties and their professionals, together with a statement that the mediator believes that there is no basis for disqualification and that the mediator has no actual or potential conflict of interest or (2) a notice of withdrawal.

(C) Objection Based on Conflict of Interest. A party to the mediation who believes that the assigned mediator has a conflict of interest promptly shall bring the issue to the attention of the mediator and to the other parties. If after discussion among the mediator, the party raising the issue and the other parties the issue is not resolved and any of the parties requests the withdrawal of the mediator, the mediator shall file a notice of withdrawal.

(f) Compensation. A mediator shall be entitled to serve as a paid mediator and shall be compensated at reasonable rates, and, subject to any judicial review of the reasonableness of fees and expenses required by this subsection of Local Rule 2, the

Model Rule 2
Mediator Qualifications and Compensation

mediator may require compensation and reimbursement of expenses ("Compensation") as agreed by the parties. Court approval of the reasonableness of such fees and reimbursement of expenses shall be required if the estate is to be charged for all or part of the mediator's Compensation and the Compensation to be paid by the estate for such mediation exceeds $25,000. If the Compensation to be paid by the estate for the particular mediation does not exceed $25,000, then court approval shall only be necessary if the estate representative objects to the fees sought from the estate. If the mediator consents to serve without compensation and at the conclusion of the first full day of the mediation conference it is determined by the mediator and the parties that additional time will be both necessary and productive in order to complete the mediation or arbitration, then:

(i) If the mediator consents to continue to serve without compensation, the parties may agree to continue the mediation conference.

(ii) If the mediator does not consent to continue to serve without compensation, the fees and expenses shall be on such terms as are satisfactory to the mediator and the parties, subject to Court approval, if required by subsection (f) of this Local Rule 2. Where the parties have agreed to pay such fees and expenses, the parties shall share equally all such fees and expenses unless the parties agree to some other allocation. The Court may determine a different allocation.

(iii) Subject to Court approval, if the estate is to be charged with such expense, the mediator may be reimbursed for expenses necessarily incurred in the performance of duties.

(g) Party Unable to Afford. If the Court determines that a party to a matter assigned to mediation cannot afford to pay the fees and costs of the mediator, the Court may appoint a mediator to serve pro bono as to that party.

Bankruptcy 101

Hon. Judith K. Fitzgerald (Ret.)
Beverly Weiss Manne, Esquire
Abagale Steidl. Esquire

- **Bankruptcy - Federal Law**
  - Applies in all 50 states, Puerto Rico and Territories
  - Title 11 of the United States Code, 11 U.S.C. § 101 et. seq.,
  - Current code enacted in 1979 and amended multiple times thereafter – most recently with BAPCPA in 2005
  - In addition, each district has their own local rules. They can be found here: http://www.pawb.uscourts.gov/local-rules-effect-june-15-2017

- **Bankruptcy court jurisdiction**
  - Extremely broad
  - Court has jurisdiction over all matters that arise in, arise under or relate to the bankruptcy case.
  - Test for jurisdiction: does dispute have a "conceivable" effect on a bankruptcy case

- **The Federal Bankruptcy System**
  - Debtors and creditors rights, for the most part, arise in the state law system
  - Federal laws can "pre-empt" the state law systems and modify the rights of debtors and creditors
  - **Purpose**: to afford the honest but unfortunate debtor the opportunity to resolve personal liability for debts through a discharge; a remedy for financial distress and to provide an even distribution to creditors of non-exempt assets

- **Filing a Bankruptcy Case**
  - Debtor = the person who owes money
  - Debtor can file a "voluntary petition"
  - Creditors can file an "involuntary petition" against a debtor when the debtor is not paying its debts as they ordinarily become due
  - The majority (>99%) are voluntary cases
  - A petition in bankruptcy is filed with the Clerk of the Bankruptcy Court
  - The petition lists all of the debtor's assets ("property") and liabilities ("debts" owed to "creditors" who have "claims" against the bankruptcy estate)
  - **Practice Note:** A debtor chooses a chapter "Ch" to file bankruptcy. With some exceptions not applicable here, most debtors choose Ch 7 (liquidation under the control of a trustee), Ch 11 (reorganization under the control of the debtor-in-possession), Ch 13 (under the control of individual debtors who meet eligibility standards and want to retain some or all of their property in exchange for payments made to a trustee who disburses them to creditors).
  - The **Means Test** (National Form 122 A-1) reviews the last six months of a Debtor's household income
    - It includes all of the income in the household, even if only one of the spouses are filing a case. It should include pension income, wages, self-employment income, rental income, food stamps, child support, alimony, private short-term disability, private long-term disability etc.

- The only income not included is social security, social security disability, or VA Disability.
- The means test is based upon the size of the household, including children, and elderly dependents, regardless of who is filing. A dependent is generally considered any party where you provide at least 50% of their case, including minor children, students under the age of 22, disabled children, disabled or elderly parents.
- The Means Test looks at the last six months of household income, (the six months prior to the month the case is filed) and doubles it to determine the household income for the year.
  - Sometimes, this method is spot on. Other times, it can be problematic, especially is the debtor receives a bonus once per year. This method would make it seem as though the Debtor received 2 bouses each year.
  - Also, income can appear much lower. For example, if the Debtor just started a $100,00 year job on December 1 but showed no income for the six months before the start of the job, the yearly income would look very small.
  - In the event of a legal separation where the parties are no longer living together, the income of the estranged spouse does not need to be included.
- Congress releases new median income figures for the means test each year- May 1 and November 1
  - The current figures
    - Household of 1 $55,633
    - Household of 2 $66,338
    - Household of 3 $82,375
    - Household of 4 $101,477
    - Every individual in excess of 4 $9,000
- If your household income falls below the median household income figure, then nothing else needs to be completed with this form.
- The means test is not completed if the primary source of the debts in a case are business related debts.
- In the even that a Debtor's household income exceeds the median income standard shown above, then Form 122C-a (Chapter 13 Statement of Your Current Monthly Income and Calculation of commitment Period). The form accounts for IRS household and vehicle operating expenses and takes in to account taxes, mandatory payments like union due, term life insurance, health insurance, and charitable contributions. All of these elements are used to reduce disposable income to help you and the court determine:
  - What is the debtor's best effort at repayment in a chapter 13?
  - How much money does the debtor have left each month to pay back to unsecured creditors?
  - How many months should the debtor make the payments to the trustee?

- **Expenses**
  - The Debtor's expenses should represent the expenses of the household.
  - The IRS household guidelines play a big part in the acceptability of expenses. If something seems to high, it probably is. As the Debtor to justify/explain the

expense. If you find that there is an explanation, like a health issue that causes dietary concerns and therefore higher grocery bills, it can be worth it to write a letter to the US Trustee explaining the issue.

- **The Bankruptcy Code (11 U.S.C. §101 et seq.)**
  - Chs 1,3 and 5 contain provisions that generally apply to all types of cases filed under the Code
  - The other Chs contains relief for debtors for either liquidation or the "adjustment of debts":
    - Ch 7 Liquidation
    - Ch 9 Adjustment of Debts of a Municipality
    - Ch 11 Reorganization
    - Ch 12 Family Farmer Adjustment of Debts
    - Ch 13 Adjustment of Debts of an Individual

- **Who Can Be A Debtor (11 USC 109)**
  - Only a Person who resides, is domiciled, has a place of business or has property in the U.S.
  - Ch 7: any "person" – individual, partnership and corporation –excluding railroads, domestic insurance companies, banks, s&l's, credit union, or a foreign insurance co. in the U.S.
  - Ch 11: any person
  - Ch 12: family farmer with regular income*
  - Ch 13: individual*
    - Regular income
    - Debt limitations for 2019: unsecured less than $419,275 and secured debt of less than $1,257,850. These limits increase every 3 years.
  - **Exceptions in Ch 12 & 13:** 180-day bar where prior case has been dismissed for failure to abide a lawful order of bankruptcy court or whose was dismissed after a creditor received stay relief. This bar is entered on a case by case basis. In addition, a judge can enter an order barring the Debtor from refilling for a judicially determined period of time for reasons including abuse of the bankruptcy system and repeated failures to file tax returns.

- **How often can you file for bankruptcy?**
  - Chapter 7- eight years from the date of the most recently filed chapter 7 case that discharged.
    - A chapter 7 bankruptcy stays on a credit report for 10 years from the date the case filed.
  - Chapter 13- every two years unless the debtor received a discharge from a chapter 7 within the 4 years prior to the filing of the chapter 13.
    - A chapter 13 bankruptcy stays on a credit report for 5 years from the date the case filed.
  - PACER has a national search page where all bankruptcy filings for the last 30+ years all over the United States can be searched by a Debtor's name or social security number.
    - Point of practice- check every single person (including both spouses), even if a Debtor has told you that they have never filed before or it is outside of the range listed above. It's better to be safe than sorry.
    - https://pcl.uscourts.gov/pcl/index.jsf

- **Credit Counseling Requirement**
    - All individual debtors must receive a briefing on available opportunities for credit counseling and assistance in performing a budget analysis within 180 days before filing. The certificate files with the bankruptcy petition.
    - The briefing must be by a nonprofit budget and credit counseling agency approved by the U.S. trustee. Clerk keeps a list. After filing, an individual debtor must complete a financial management instructional course before he or she can receive a discharge. The clerk also has a list of approved financial management instructional courses.
    - There are exemptions to the completion of the credit counseling requirement, which include: incapacity, disability, or active military service in a military combat zone. A thirty day temporary waiver can be requested, with a separate motion that outlines the exigent circumstances preventing the completion of the course, but the course still needs to be completed within the 30 day extension period.

- **Redaction Requirements**
    - Federal Rules on Bankruptcy Procedure 9037
        - All personal identifiers must be redacted before anything is electronically filed with the court.
            - Identifiers include:
                - social security numbers
                - taxpayer ID numbers
                - dates of birth
                - Minor Names
                - account numbers
                - Employee ID numbers
        - In the event that something is filed with a personal identifier, then a motion to redact the personal identifier must be filed (Local Bankruptcy Form 36) which includes a copy of the document with the personal identifies redacted.

- **How The Bankruptcy Case Will Proceed**
    - **How is a case filed?**
        - Debtor or petitioning creditors file a "petition" seeking an order for relief.
        - Petition is filed with the Clerk of the U.S. Bankruptcy Court
        - Voluntary Petition is stamped with an order for relief upon its filing
        - Debtor will file a "Statement of Affairs" answering questions about its financial condition, and "Schedules" listing ALL assets, liabilities, exemptions, leases and codebtors
            - The national bankruptcy forms can be found here: https://www.uscourts.gov/forms/bankruptcy-forms
            - In addition, there are local forms for each district: http://www.pawb.uscourts.gov/local-forms-effect-july-1-2013
            - The Western District of Pennsylvania must be filed with the court, not on the case docket. It is the only "wet ink" signed paper that is filed with the court. It is also the only paper filed with a full social security number directly with the bankruptcy court clerk. (See Form 1A on the local forms page)

- Involuntary Case:
  - 3 unsecured creditors
  - liquidated claims not subject to a bona fide dispute in excess of $17k aggregate
  - where Debtor is not paying its debts as they come due.
- Petition not brought in good faith = DAMAGES against petitioning creditors, including attorney fees and compensatory damages

- **Where does the Bankruptcy Case get filed?**
  - 28 U.S.C. 1408
  - Debtor's domicile, residence or principal place of business, or principal assets, during the 180 days immediately preceding the filing OR the District in which a related entity has filed ('in which there is pending a case…concerning such person's affiliate, general partner or partnership")

- **Who Runs the Bankruptcy Case:**
  - Ch 7 : trustee
    - Duties -collect assets
    - distribute all non-exempt assets of the debtor
  - Ch 12 and Ch 13 case:
    - Debtor stays in possession
    - Trustee collects the monies and distributes the funds to creditors as proposed in the plan
  - Cases with plans: creditors can vote for against the plans

- **Exemptions §522:**
  - Debtor's "exemptions - protect equity in a home, motor vehicle, household possessions, jewelry, tools of the trade, social security benefits, personal injury recoveries, and certain assets in qualified plans (401K, IRA, etc.). They're the things that the Debtor can exempt from the administration of the bankruptcy estate.
  - The Debtor's exemptions can be found at 11 U.S.C. § 522.
  - Husband and wife filing bankruptcy together: exemptions are doubled. However, if an asset only belongs to one party, then only half the exemption can be used.
  - **PA: Debtor can elect state or federal exemptions**
  - **Debtor can void liens which impair exemptions**
  - **States are permitted to opt into or out of the federal exemptions. Each State is different. For example, PA allows the Debtor to select PA or federal exemptions. Ohio just allows the Ohio exemptions.**
  - **The Federal Exemptions are the same in all states that opt into the federal exemptions.**

- **Property of the Estate. 11 U.S.C. 501**. All property in which the debtor has ANY interest, with limited exceptions, becomes "property of the estate".

- **What happens in: Ch 7?**
  - No Asset case: no assets for the trustee to administer.
  - Assets – trustee will collect assets and make a distribution to creditors who file claims after paying administrative claims

- Typical Ch 7 individual debtor receives discharge 90 to 120 days after 341 meeting

- **What happens in: Ch 13**
  - Debtor is a "wage earner" with dependable monthly income.
  - Pays a portion of wages to Ch 13 trustee, through a wage attachment whenever possible.
  - Plan must be filed within 15 days after the filing of the bankruptcy petition;
  - Court must confirm the Ch 13 Plan.
  - Trustee distributes to creditors per the plan
  - The unsecured debt that is repaid is paid on a percentage basis with no late fees, no penalties and no additional interest (with the exception of student loans) based on the timely, accurately filed, creditor claims.

  - **Ch 13 -- Reorganization for Individual With Regular Income**
    - Debtor remain in possession of all assets
    - Only debtor can propose the plan
    - Plan provides for payment of claims
    - Allows the debtor to repay arrearages over time
    - If Debtor has significant assets, means test will provide debtor must be in Ch 13 not 7
  - **Ch 13 Plan**
    - Ch 13 Plan - debtor's best efforts to repay his/her creditors
    - Creditor must receive at least as much money under the plan as it would receive as if the debtor were in a Ch 7
    - Debtor files a budget listing all income and expenses
    - Plan can last for up to 60 months.
    - Debtor makes monthly payments to Ch 13 trustee for the pre-petition creditors.
    - Trustee distributes monthly payments to the debtor's creditors.
    - Debtor gets discharge at end of the plan.
    - Certain debts are dischargeable that cannot be discharged in a Ch 7 proceeding.
    - Generally, the terms of a mortgage are not changed by the chapter 13 plan. The exception are mortgages that mature during a plan tern.
    - The average plan term is 36-60 months. If a plan term is less than 60 months, then the dets being repaid through the plan must be paid in full

  - **Ch 13 – The co-debtor stay**
    - There is also a stay of actions against certain co-debtors. The co-debtor stay applies to consumer debts.
    - The co-debtor stay is designed to prevent creditors from putting pressure on a debtor by pursuing individuals, who have not filed for bankruptcy, who are also liable for the debt.

  - **Ch 13 - The Ch 13 Trustee**
    - A standing Ch 13 Trustee oversees the Ch 13 Plan and collects and disburses the monies paid under the plan
    - The Ch 13 debtor must remain current on post-petition tax and utility obligations. if the debtor does not make its payments under the plan, creditors or the Ch 13 trustee may move to dismiss the case.
    - Creditors can also move to dismiss or convert a case for non-payment under the plan

- The trustee is paid through for their administration of the estate by charging a percentage fee

- **Re-filing a Chapter 13**
  - If there has been a case dismissal within the last year, then a Motion to Extend the Automatic Stay must be filed with the new case.
  - The Motion must be filed within the first days of the filing of a case
  - Any bankruptcy judge in the district can hear the motion
  - The hearing must be held before the thirty day deadline expires because a stay cannot be extended once it has expired.
  - The motion needs to contain a significant financial change that explains why the debtor is better able to afford the plan payments with this new case
  - The motion needs to contain an affidavit, signed by the debtor, that states that the reasons provided in the motion are true.
  - Also, review the prior case to ensure that no assets have been forgotten and that any issues from the prior case have been address, including getting tax returns filed, dealing with mortgage issues, etc.

- **Claims**
  - When there are assets in the bankruptcy estate over and above property that the debtor claims as exempt, with some exceptions not applicable here, proofs of claim are filed by creditors who want to share in any dividend that results from the liquidation of the assets or from payments the debtor will make through a confirmed plan.
  - The claims must be filed within the deadlines established by the bankruptcy code. The date of filing controls the date that claims are due.
  - Governmental creditors are given a long period of time to file their claims than regular creditors.
  - The claim scan be tracked through the case Claims Register which includes all filed claims, the deadlines, and the amount of each claim filed.
  - By filing a claim, a creditor avows themselves to the jurisdiction of the bankruptcy court.

- **Types of Claims:**
  - Secured Claims –11 U.S.C. 506
  - Administrative Claims -11 U.S.C. 503
  - Priority Claims - 11 U.S.C. 507
  - Unsecured claims –11 U.S.C. 502

- **Filing Proofs of Claim – 11 U.S.C. 501, Rules 3001 - 3005**
  - When?
  - Form: Official form + addendum. The addendum needs to include an evidentiary basis for your claim https://www.uscourts.gov/forms/bankruptcy-forms/proof-claim-0
  - Objections to Proofs of Claim –11 U.S.C. 502, Rule 3007
  - Other Chs: To participate in a distribution, file a proof of claim within Court set deadline 11 U.S.C. 501; Official form for proofs of claim.

- **Filed claim is deemed allowed unless objection is timely filed -** 11 U.S.C. 502 disallowance includes claims that are
  - invalid claims under applicable non-bankruptcy law,

- unmatured interest
- rejected lease damages over bankruptcy cap

- **Claims are treated and paid differently, depending on their status in the bankruptcy case.**
  - Secured claims are paid first from their collateral
  - administrative priority claims held by domestic support creditors and by those who are engaged in the estate are paid next
  - other priority claims are paid next and these include things such as certain taxes, wages, and benefits
  - general unsecured claims are paid next
  - if anything is left, the rest goes back to the debtor

- **Automatic Stay**
  - **The Automatic Stay.** 11 U.S.C. 362(a) – An automatic stay of various actions against the debtor, the debtor's property and property of the estate takes place to stop most collection activity and give the debtor a breathing spell from creditor action. Known as the "poor man's injunction" – the automatic stay STOPS:
    - All litigation and process that was or could be brought against the debtor
    - Actions against property of the estate
    - Executions
    - Garnishments
    - Sheriff sales
    - Repossessions
    - UCC sales
    - Most UCC filings
    - Mortgage filings
    - Entries of Judgment
    - Attachments
    - Retaining repo-d collateral
    - Setoff for pre-petition obligations
    - "Bank Freezes of bank accounts

  - **Violations of the Stay**
    - Action taken in violation of stay are voidable or void
    - Debtor can receive damages against a person that violates the stay, including costs, attorney fees and even punitive damages. The damages must be actual damages and the conduct must be "willful and malicious". See 11 U.S.C. Sec. 362(k).

  - **Lifting the Automatic Stay**
    - Secured creditors with valid liens may look to their assets for satisfaction of their debts
    - This request must occur through a formal court motion, or if the Debtor is surrendering the collateral and lists the collateral as surrendered in a plan, once the plan is confirmed, the stay is lifted.
    - Court will grant for various reasons including cause
      - Lack of adequate protection
      - Lack of Equity
      - Property not necessary for effective Reorganization

        - Lifting the Automatic Stay
        - Limited lifting for family court cases- the court will generally lift the stay for the family docket to proceed, however, the court will resolve the right to review all equitable distribution settlements
        - In addition, the automatic stay can be lifted to allow a civil proceeding to occur, where the debtor is a defendant, if the recovery is limited to the Debtor's insurance coverage limits.
    - What else can be "cause"?
        - Bad Faith Filings
        - Lack of Insurance
        - Diminution in the value of the creditor's interest in the property (So, failure of Debtor to pay senior lienors or taxes, or use and deprecation of asset)

- **Litigation by and Against the Estate**
    - Within the estate, various litigation may take place. Depending on the nature of the cause of action, litigation will be commenced either by formal complaint or by motion. *See, inter alia,* Federal Rule of Bankruptcy Procedure 7001.

- **The 341 Meeting**
    - Debtor must personally attend a "meeting of creditors" and submit to examination under oath
    - The U.S. Trustee presides in a Ch 11 case and Ch 7, 13 or 12 Trustee presides in those cases
    - Creditors can ask questions of the debtor within the Debtor's financial scope
    - Creditors can elect a different trustee
    - Debtor's failure to attend =cause to dismiss case
    - If parties have other questions about assets or liabilities – a "2004 examination" of any party may be conducted upon notice
    - All case parties are served with notice of the 341 Meeting
    - The Debtor must bring their valid government issued photo ID and an original social security card

- **Retention of Professionals**
    - **How are professionals retained?**
        - Professionals must be retained by Court order and their fees approved by the Court.
        - Sections 327 to 331 and Bankruptcy Rules 2014, 2016, and 6005 govern the retention and payment of the professionals representing debtors in possession, committees, and trustees in bankruptcy cases.
        - The office of the United States Trustee also has issued guidelines for professionals requesting compensation.
        - Section 327(a) provides a trustee or DIP with court approval may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons (i) that do not hold or represent an interest adverse to the estate and (ii) that are disinterested persons, to represent or assist the trustee.
        - "Disinterested person" 11 USC 101(14) excludes:
            - Creditors.
            - Equity holders or insiders.

        - An investment banker for any outstanding security of the debtor within the preceding three years and its counsel.
        - A person who was a director, officer, or employee of the debtor within the preceding two years.
        - An investment banker of the debtor.
        - Someone who has an interest materially adverse to that of the estate.
    - A person is "not disqualified for employment … solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the US trustee, in which case the court shall disapprove such appointment if there is an actual conflict of interest."
    - If the professional received a preferential transfer before the case, she will not be disinterested unless she disgorges the fee.
    - If the professional is owed money for pre-petition services, he is not disinterested – unless he waives the claim.
    - The court is also permitted to determine whether or not the work completed by an appointed professional is commiserate with the fee charged. This includes realtor commissions and legal fees.
    - Responsibility to appoint
        - General point of practice
            - Counsel for the Debtor needs to ask the Debtor if there are any lawsuits and check the county prothonotary to confirm
            - Special counsel should always ask their clients if they have filed, or are filing, a bankruptcy, and remind their clients to inform them if they file at any point during their attorney/client relationship
        - Chapter 7
            - Usually, the chapter 7 trustee unless that trustee abandons an asset
        - Chapter 13
            - Counsel for the Debtor
            - Needs to be appointed immediately
    - Any professional conducting work for a bankruptcy case, outside of the debtor's counsel, and the trustee, should be appointed. Including:
        - Family court counsel
        - Criminal counsel
        - Personal injury counsel
        - Employment discrimination counsel
        - Accountants
        - Realtors/brokers
        - Auctioneers
        - Asbestos litigation

- **Retention of Professionals: Fee Applications**
    - Section 328 of the Bankruptcy Code provides for hiring professionals under any reasonable compensation terms, including contingencies, hourly rates, and retainers.
    - Section 330 of the code provides for a judge to review the fees to be paid to professionals and adjust them if he or she sees fit
    - Fees: no payment until approved by court!
    - Some of the Bankruptcy judges for the Western District judges have their own preferred order for professional retention.

- In addition to the statement that the professional is disinterested, the signed fee agreement with the professional is also filed as an attachment to the motion

- **Bankruptcy Sales**
  - **Sale of Assets**
    - Sale in ordinary Course:
      - Section 363(c): For operating businesses allowed to be operated under 721, 1108, 1203, 1204, or 1304 trustee may sell property of the estate, in the ordinary course of business, without notice or a hearing.
      - Examples: sale of inventory
    - Sales outside of the ordinary course of business
      - Trustee can sell outside ordinary course of business after notice and hearing §365(b)(1)
    - Trustee can sell assets free and clear of claims, liens and interests of any entity §365(f) :
      - permitted under applicable nonbankruptcy law
      - entity consents;
      - interest is a lien and sales price > aggregate value of all liens on such property;
      - such interest is in bona fide dispute; or
      - Entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

  - **Sale Process**
    - Sale of all assets: permitted in Third Circuit although issues of "sub-rosa" plan
    - Buyer must be in "good faith"
    - Sale to good faith purchaser will not be disturbed on appeal § 363(m)
    - Sale must be advertised per local rules (Rule 6004-1)
      - The advertising process is not required in a chapter 13 case where the trustee consents and the sale proceeds are enough to pay off all the debts owed in the plan. (Local Rule 6004-2)
    - Sales usually subject to higher and better offers
    - Larger sales will have sale and bid procedure orders

- **Executory Contracts and Leases**
  - **§ 365. Executory contracts and Unexpired leases**
    - Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.
    - "Ipso Facto" clauses – unenforceable
    - Personal service contracts – no assumption without consent of counterparty
    - Financial services (lines of credit) no assumption
    - Ch 7 – Leases of real or personal property rejected after 90 days if not assumed
    - Ch 9, 11, 12,13 - Residential Real Property or Executory Contracts -- assume or reject before plan confirmation

  - **§ 365. Executory Unexpired leases – non-residential real property**
    - Trustee/DIP must perform all obligations until lease is assumed or reject

- Court may extend time for performance of obligations arising in first 60 days of case
- Lease is rejected and trustee must surrender the property if not assumed on earlier of (i) plan confirmation or (ii) 120 days after order for relief
- Court can extend 120 days for up to 90 days on motion before original time expired

- **Voidable Transfers**
  - Critical Concept: Solvency
    - Solvency: liabilities exceed assets
    - Section 101(32) "Insolvent" means sum of entity's debts is greater than all of entity's assets at fair valuation exclusive of property fraudulently transferred or exempt property
    - Partnership solvency = partnership assets over liabilities PLUS excess of value of each general partner's non-partnership assets over non-partnership debts

- **Preferences 11 U.S.C. § 547**
  - In almost every instance where a creditor has received payment in the ninety days before a customer/debtor has filed a bankruptcy case, the debtor (or trustee) will be able to make out a "*prima facie*" case for a preference. § 547(b)
  - Presumption: debtor was insolvent during the 90 days prior to the filing of its bankruptcy

- **Preferences: Elements**
  - Debtor made a transfer:
  - to or for the benefit of a creditor;
  - for or on account of an antecedent (pre-existing) debt owed by the debtor;
  - while the debtor was insolvent;
  - within 90 days of the petition filing (or 1 year to an insider); and;
  - enables creditor to receive more than such creditor would receive in a Ch 7

- **Preferences: Deadlines**
  - Debtor (or successor Trustee) must bring a preference action under §547 within:
    - the later of: (A) 2 years after the bankruptcy filing; or (B) 1 year after appointment of a first trustee if the appointment occurs before the expiration of the period specified in subparagraph (A); or
    - the time the case is closed or dismissed.

- **Defenses**
  - **Contemporaneous Exchange**
    - A transfer intended debtor to be and in fact was a substantially contemporaneous exchange §547(c)(1).
      - Example: sales
  - **Ordinary Course of Business**
    - transaction was in ordinary course of both transferee's and debtor's business [subjective test]; or (ii) according to ordinary industry business terms [objective test] 547(c)(2)
  - **New Value Defense**

- A creditor's extension of additional credit to a debtor within the preference period qualifies as offsetting new value if:
  - the creditor gave the debtor 'new value' *after* the avoidable transfer sought to be offset;
  - that 'new value' was given on an unsecured basis; and
  - as of the bankruptcy petition date the 'new value' advance remained either unpaid or paid through a transfer which is itself avoidable." § 547(c)(4).

- **Lawsuits**
  - Generally, the debtor or trustee can sue where the bankruptcy is filed
  - Exceptions are in 28 U.S.C. 1409
    - Example: venue of avoidance actions to recover amounts less than $13,650 from a non-insider can be filed "only in the district court for the district in which the defendant resides."
    - The amounts of the exceptions change every three years on April 1 per 11 U.S.C. 104
    - The current amounts took effect April 1, 2019 and will change again on April 1, 2022

- **Fraudulent Transfers**
  - A transfer made within two years before the petition date:
    - debtor acted with an intent to defraud, or
    - (ii) debtor while insolvent transferred property for less than "reasonably equivalent value" (11 U.S.C. 548(a)(1))

- **The Strong Arm Powers**
  - Section 544 of the Bankruptcy Code
  - Trustee can avoid unperfected security interests.
  - If the secured creditor's lien is avoided, the creditor becomes an "unsecured creditor".
  - If the trustee can avoid the security interest, it is preserved for the estate § 551
  - Trustee has the status of an executing lien creditor or bona fide purchaser
  - Implementation of Section 544
  - A trustee may but is not required to avoid liens and security interests
    - In a Ch 7 the trustee is not going to chase after assets with nominal value to the estate
    - In a Ch 11, the DIP may have business reasons to not void liens of certain creditors

- **The Discharge**
  - Ch 7 – Individuals only – usually 60 -120 days after 341 meeting
  - A business entity does not receive a discharge in a Ch 7 case. Instead, a final decree is entered that finishes the case.
  - Ch 12, 13 - upon completion of plan

- **Discharge: Effect**
  - Relieves the debtor from all personal liability for dischargeable debts through the petition date, but not after the petition date.
  - Discharge injunction prohibits creditors and parties from pursuing debtor or assets of debtor if debtor received a discharge
  - Non-Dischargeable Debts

- **Debts that cannot be discharged: (11 U.S.C. 523)**
  - most taxes,
  - alimony, maintenance, or support,
  - student loans,
  - fines, penalties, forfeitures, or criminal restitution obligations,
  - personal injuries or death caused by the debtor's operation of a motor vehicle while intoxicated, debts not scheduled by the debtor
  - Credit, Loans obtained through fraud, false financial statements, consumer debts for luxury goods
  - Debts not scheduled & not known about
  - Debts due to Fiduciary Fraud, Fiduciary Defalcation, embezzlement, larceny

Faculty

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B. Summer Chandler is a visiting assistant professor with the Southern University Law Center in Baton Rouge, La. She has also taught at the Georgia State University College of Law and the Concordia University School of Law. Prior to joining the academy, Prof. Chandler practiced for 15 years in international and national law firms, focusing her practice on business bankruptcy, creditors' rights litigation, distressed transactions, and other business transactions and disputes. She frequently writes and lectures on bankruptcy, business law, and ethics and professionalism. She is also engaged in a number of professional organizations, including ABI and the American Bar Association. Prof. Chandler received her undergraduate degree from the University of North Carolina at Asheville and her J.D. from the University of Michigan Law School.

C. Edward Dobbs is a senior partner in the Atlanta office of Parker Hudson Rainer & Dobbs LLP and has practiced law for nearly 45 years. He has been involved documenting and closing commercial loans for banks and other financial institutions; representing financial institutions in debt-restructurings, workouts, litigation and bankruptcy cases; and representing debtors, unsecured creditors and creditors' committees in bankruptcy cases. For more than 25 years, a sizeable part of Mr. Dobbs's practice has included serving as a neutral in both arbitrations and mediations. He is on the panel of neutrals (for both arbitration and mediation) maintained by the American Arbitration Association for commercial cases and the Delaware Bankruptcy Court's mediation panel, and is the author of a number of articles (as well as a forthcoming treatise on mediation of commercial disputes) and a frequent speaker on settlement negotiation and mediation topics, including as a lecturer on mediation topics at Georgia State Law School and at each of the ABI/St. Johns Law School's annual mediation courses. Mr. Dobbs has served as court-appointed or party-retained mediator in numerous commercial disputes pending in state and federal courts in throughout the Southeast and in Arkansas, Connecticut, Delaware, Illinois, Louisiana, Minnesota, New Jersey and Texas, including commercial litigation arising out of or related to bankruptcy cases, such as fraudulent-transfer claims (including Ponzi schemes), professional fee-disgorgement disputes in administratively insolvent cases, voidable preference claims, plan formulation and confirmation challenges, claims against officers and directors for breach of fiduciary duty, equitable subordination challenges and recharacterization of insider loans, and disputes for asserted noncompliance with the WARN Act and PACA. He also has been

involved in lender-liability claims, defamation claims, fraud claims, interbank disputes (including disputes under both participation and syndicated agency agreements), claims asserted under various types of commercial contracts (including sales and distribution agreements, construction contracts and joint-venture agreements), business separations and dissolutions, suits on guaranties, legal malpractice claims, and claims by banks and insurers regarding scope and coverage of credit insurance. Mr. Dobbs received his A.B. in 1971 from Davidson College and his J.D. in 1974 from Vanderbilt University Law School, where he was articles editor of the *Vanderbilt Law Review* and graduated Order of the Coif.

Hon. Joan N. Feeney is a neutral for JAMS in Boston, where she provides mediation, arbitration and neutral analysis services in complex disputes worldwide. She previously was a U.S. Bankruptcy Judge for the District of Massachusetts from 1992 to May 2019 and Chief Judge from 2002-06. She is currently Chief Judge of the U.S. Bankruptcy Appellate Panel for the First Circuit. Judge Feeney is a Fellow, vice president and a member of the board of directors of the American College of Bankruptcy and served for three years on its Board of Regents. She is a co-author of the *Bankruptcy Law Manual*, a two-volume treatise published by Thomson Reuters, and a co-author of a book for consumers, *The Road Out of Debt*, published by John Wiley & Sons. Judge Feeney was the president of the National Conference of Bankruptcy Judges in 2011 and 2012 and has served that organization in numerous capacities, including on its Board of Governors,as chair of its Newsletter Committee, as editor in chief and reporter for *Conference News*, and on special projects. Judge Feeney was the business manager of the *American Bankruptcy Law Journal* from 2016-18, and was an associate editor from 2013-16. She is a founder and co-chair of the M. Ellen Carpenter Financial Literacy Project, a joint venture of the U.S. Bankruptcy Court for the District of Massachusetts and the Boston Bar Association. She was a member of the International Judicial Relations Committee of the Judicial Conference of the United States from 2006-12 and hosted many delegations of foreign judges in the U.S., as well as traveled to foreign countries on behalf of the federal judiciary. Judge Feeney is the chair of the Massachusetts Bankruptcy Court's Pro Bono Committee and was co-chair of the Massachusetts Local Rules Committee for many years. She is a member of ABI and sat on its Board of Directors, and she has been judicial chair of several regional ABI educational programs and is a frequent ABI panelist. Prior to her appointment, Judge Feeney was an associate and partner in the Boston law firm Hanify & King, P.C., was a career law clerk to Hon. James N. Gabriel, U.S. Bankruptcy Judge for the District of Massachusetts, and a partner in the Boston law firm Feeney & Freeley, where her practice included service as a trustee on the U.S. Trustee's private panel of trustees. In 2005, she received the Boston Bar Association's Haskell Cohn Award for Distinguished Judicial Service, and in 2009 the American College of Bankruptcy First Circuit Fellows recognized her for contribution to bankruptcy jurisprudence and practice. She also was the 2018 recipient of the Charles P. Normandin Lifetime Achievement Award from the Boston Bar Association and the National Conference of Bankruptcy Judges Excellence in Education Award. Judge Feeney is a graduate of Connecticut College and Suffolk University Law School.