

# MINUTES OF THE OREGON STATE BAR DEBTOR-CREDITOR SECTION EXECUTIVE COMMITTEE MEETING

Saturday, February 25, 2017 at 12:30 p.m.

The first regular meeting of 2017 was called to order at approximately 12:30 p.m. by E. Clarke Balcom, Chair, at the Salem Conference Center, 200 Commercial Street SE, Salem, Oregon. Members were also permitted to attend by phone.

Current members attending were Richard J. Parker (Past Chair), E. Clarke Balcom (Chair), Justin D. Leonard (Chair Elect), Britta E. Warren (Treasurer), Laura L. Donaldson (Secretary), Judge Thomas M. Renn (ex officio), Jordan S. Hantman (2017), Kent Anderson (2017), Michael Fuller (2018), Mark B. Comstock (2017), Conde T. Cox (2017), Alexzander C.J. Adams (2018), Carla G. McClurg (2018), Margot D. Seitz (2017), and Cassie K. Jones (2018) [via telephone].

The Section's OSB liaison Karen Lee was also in attendance.

Not present was Wolfgang George Senft (2018).

1. **Approval of Minutes.** The minutes from the Executive Committee meeting of November 10, 2016 at the United States Bankruptcy Court for the District of Oregon were approved, following clarification by Britta concerning a few minor revisions. Due to an email issue not everyone on the Executive Committee received the minutes prior to the meeting. Judge Renn requested further clarification of the revisions. Britta noted the revisions as being changes to Loren Scott's name, changes discussed with former Treasurer Justin Leonard concerning treasurer reports and the pro bono task force for last year, and changes noted by Karen Lee regarding the section surplus.

A brief discussion was held concerning the committee's email list and the Oregon State Bar's ability to handle attachments to emails. Clarke reported he was in contact with Sarah Hackbart at the Oregon State Bar concerning the executive committee list he inherited and inquiry regarding committee member email updates to that list. Sarah indicated the OSB will monitor the Executive Committee email list and update committee names on the list each year so everyone is sure to timely receive minutes and the agenda.

2. **Welcoming of Incoming Members.** The Executive Committee welcomed new members for the term expiring December 31, 2018, including: Michael Fuller, Carla McClurg, Cassie Jones, Alexz Adams and George Senft. The Executive Committee also welcomed Conde Cox, new member for the term expiring December 31, 2017. Clarke noted for the new members that the job doesn't pay well, but they get a chance to make a difference.

Clarke provided the reimbursement standards to the new executive committee members. Karen explained the form to complete and how to get reimbursed for expenses and reminded members that the form must be returned to the Treasurer for reimbursement not to her. Hotels or something other than mileage must have itemized receipts for what was spent but the receipts

can be a copy. Karen stated just to scan the form and receipts and send to the Treasurer. Rich Parker stated that there is a per diem limit. Karen clarified that it depends on whether the request is for in-state or out-of-state reimbursement. Clarke reminded all to follow the details on the second page of the form.

Clarke then reminded the committee how executive committee members become officers and that service is a long term commitment. Members who become officers then hold each position (Secretary, Treasurer, etc.) until they become Chair. Clarke reminded all members present that it is ok to show up to the meetings by phone if they cannot attend in person.

### 3. **Committee Reports.**

**Committee Liaisons:** Clarke reported on liaison positions to be filled from retiring members. Clarke noted that one of the spots, Federal Bar Association (“FBA”) liaison usually has fallen to the Chair to report on. However, new member Conde Cox is already active with the FBA and volunteered to be the liaison. Judge Renn indicated that retired Judge Elizabeth Perris worked for years to get judges a slot on the board and it was first given to Judge Renn when he was Chair of the committee. He spoke of the importance of the Chair maintaining that slot so that bankruptcy remains an integral part of the federal bar practice. Past chairs generally have little to do and had time to help with the transition. Judge Renn also noted that Judge Peter McKittrick and Judge David Hercher are both active with the FBA.

Clarke stated his understanding that it doesn’t have to be the Chair who serves as long as the liaison position is filled. Judge Renn discussed that the Chair can get their feet wet in the FBA due to the way their meeting times fall within the executive meeting calendar year for transitions, the FBA’s meeting year being September through May. Conde reported due to his active role now in the FBA (he has a number of pending cases) he would be happy to serve as liaison. Rich and Conde will confirm how many people can be present at the FBA meetings and both may serve. Judge Renn reminded the committee that Judge Perris worked hard to preserve the historical knowledge and presence the bankruptcy community has with the FBA. We currently have more than one seat at the FBA table and need to make the effort to understand the federal bar’s history and how bankruptcy fits into that history as a federal practice. Conde reported that he has worked with the Chair of the FBA in practice and he contributes to the FBA newsletter. Clarke suggested that Conde and Rich serve as FBA liaisons through May and then Clarke will join them in September.

Clarke then reported for other liaison positions: Mark Comstock will cover legislative, Carla McClurg will cover the Newsletter, Alexander Adams will cover the Annual Meeting and Northwest Bankruptcy Institute (NWBI) will be covered by George Senft. Justin noted it is a good idea to have a consumer person involved with the NWBI Committee.

**Annual Meeting:** There was no report. Clarke reported that the liaison to the committee, Tim Solomon, retired from the Executive Committee. Alexander Adams will replace him as liaison.

**CLE:** Mark Comstock reported that we need to select a date for the annual meeting and CLE to be held in Eugene. No date was previously selected as the venue for the meeting is

generally the U of O law school. That commitment requires knowledge of the Oregon Duck football game schedule to avoid conflicts. Clarke thought we traditionally scheduled during a “no ducks in town” game. Mark presented the Oregon Ducks game schedule. Rich said the meeting is generally held late September or early October. Britta stated we usually hold it in September. Kent added that the law school should be contacted soon about dates and options. Kent also volunteered to be the liaison for this committee. Kent noted that he participated in the annual meeting planning committee for 10 years about 20 years ago.

Mark reported that discussion of CLE topics is on hold until a date for the meeting is decided. One topic up for discussion is whether to have a form national plan and five or six possible additional topics. Teresa Pearson is waiting on direction then she will get committee back together and move forward from there.

**Consumer Bankruptcy:** Laura reported that the next Consumer Bankruptcy meeting will be held on March 30, 2017 at 4:30 p.m. at the United States Bankruptcy Court in Portland. Michael Fuller is going to lead the meetings but Laura will remain the liaison for those meetings. Given Michael’s current teaching schedule, Rich and Laura will help out in leading the meetings as needed by Michael.

**Legislative:** Carla permanently abstained from all votes which were discussed. Mark Comstock reported on position request forms on three bills that the Executive Committee is tracking as having an impact on debtor-creditor practice. Mark reports the first is SB362 which proposes to change the interest rate from 9 percent to a floating interest rate which as Dan Steinberg wrote, will create 1% tied to one of the treasury rates, and would essentially make Oregon’s interest rate a 1% interest rate. The bill is vague as to how it works, when the interest rate is set, it re-adjusts annually and has no guidance on prejudgment interest. This is a request for first comment to negotiate changes and if the bill’s sponsor is not willing to change then to opposed it inside of the legislature. The legislative committee is asking for approval of that decision by the executive committee. The purpose is to negotiate changes to clarify the vague provisions and explain why simple interest may be better for certainty in judgments in courts. Mark further commented that whether it is a good idea to lower the interest rate from 9% to something different is a policy decision for the legislature.

Conde commented the lower rate is more in line with the federal interest rate. Clarke shared a story about a client debt buyer whose practice was to sue, get a judgment and sit on it, then go in and take everything due to the large accumulated judgment interest which can be quite devastating. Mark noted that one unanticipated result as written if adopted would apply to domestic relations cases that may have monthly adjustments of interest where it would be difficult to figure out what an arrearage would be. The committee believes the bill needs work and if it is going to go forward wants the legislature to decide what the appropriate rate should be.

Conde asked Mark what the legislative committee thinks about taking away the post-judgment contract interest rate. Mark noted that was not discussed in the legislative committee. Right now it is the contract rate or 9% default. Conde also inquired whether this bill implies that if the contract rate is unavailable then the floating rate would be only option to which Mark replied yes.

Mark indicated for this process the legislative committee is asking for permission to take the presented position. The position request then goes from the executive committee's decision to the bars public affairs committee of the board of governors then it is posted. If it receives approval then we can take a position. It is vetted amongst all bar sections. Mark requested the committee agree to the second box in the request; express concerns, provide technical comments, and potentially oppose it.

Michael requested clarification that the committee's vote has nothing to do with policy issues just the technicality issues; meaning, if they fix the technical issues, by voting in favor the executive committee still doesn't support the substantive portion of the bill. Conde commented we should say if there are no changes whether we support it and comment on it. Margot commented we should support the requested position as drafted. The committee then voted in favor of the legislative committee's requested position on the bill.

Mark presented two debt buyer bills, HB2166 and HB2356, bills that are substantively the same by two different parties. Mark commented the executive committee has the same request to comment, provide technical comments, and potentially oppose the bills as written. Mark expressed that the legislative committee is not advocating whether debt buying is good or bad, that is a policy decision. Identified in these bills are changes in the practice of law that are specifically within the province of the court and also essentially limit the authority of the judge, and provide for a new discretionary standard which is whatever in the court's sole discretion that means.

Mark further noted that specifically in the outline of what the committee adopted was to oppose the provisions that specifically say an action must be pled in this manner, (sub paragraph C of the outline) limits the court in what the designated proof must be, limits the power of the court to enter a judgment, and limits or changes the way attorney fees are potentially available. Mark noted some of the problems with the bill include (in sub paragraph J of the outline) a provision that attorneys would be regulated by having to register with DCBS, post a bond, and have E&O insurance if it is a non-incident portion of the attorney's practice that collects consumer debts or represents potential debt buyers. This bill further provides if you don't register or comply with pleading or attorney fee rules, it subjects the attorney or debt buyer/collector to being found in violation of the UTPA and UDCPA under the state statutes. Mark noted the legislative committee feels there are problems with these bills, they should have comments and suggested technical amendments and requests opposition of the bills as written.

Mark added that historically similar bills have been before the debtor-creditor section and legislature going back to 2012 which were not adopted. The debtor creditor section has been able to oppose these bills before. Registration of debt buyers may well be a policy choice and if the state wants to do it that's fine, but the legislative committee feels these bills regulating attorney practice and court practice goes too far in this form.

Clarke asked for comments. Michael requested clarification of the job of this committee. He inquired whether the executive committee should be making substantive suggestions to the legislator, Attorney General and Oregon Law Center or whether the committee is here to provide advice as to the procedural and technical language. Mark noted historically the committee has provided comments and negotiated technical changes to bills that may not be apparent to the advocate of the changes. Historically we don't make policy provisions the group simply says the

bill has a problem and vote. Conde noted that this bill is different because you are addressing regulating lawyers in the practice of law so it is more directed to a specific group. Michael also asked Mark whether he could identify any of these issues as more procedural because Michael views them as more substantive issues than procedural issues. Michael doesn't see how the proposal is a change from what is already going on, citing the recent case of Gordon v. Rosenbloom as an issue on appeal (discussing DCBS regulating an attorney doing debt collection with regard to pleadings). Mark said that is part of the issue here which is the regulation of the practice of the law.

Justin commented that it might be a good idea to raise these issues at the legislative committee level with those who have been dealing with the nuts and bolts of the legislation. Justin noted this committee's function as an executive body is to support the legislative committee; hashing through the nuts and bolts is not a good use of the committee's time. Rich agreed and added that the bill is vague as to which attorneys are covered creating confusion as to when you have to register as an attorney. Justin moved to approve the recommendation of the committee, Conde seconded. 8 members in favor, three were opposed.

Rich noted two current similar bills HB2272 and SB254 which potentially give the Oregon Department of Revenue the right to have all banks and credit unions in this state perform a data match to see if anyone who owes them money has a bank account. One is sponsored by the Governor's office, the other by two Democrats. Kent noted currently the IRS has access to a database showing who has a bank account through homeland security which is why a social security is needed for a bank account. Rich indicated that the California franchise tax bill doesn't do this and it seems like overreaching by the State. The bills provide bankers get paid a fee by state to be tacked onto the taxpayer's debt. Rich felt these bills would drive people out of the banking system entirely or cause them to use other parties' bank accounts which could lead to fraudulent transfer or other issues in bankruptcy. Kent moved to oppose these bills and Conde seconded. Mark advised that if the committee wanted to suggest authorizing technical comments or oppose these bills he will take it to the legislative committee. Three members abstained from the vote, the majority present committee members approved to oppose the bills as written.

Mark discussed SB654 which prohibits the sale of a judgment debtor's redemption rights. Mark states this appears to essentially be a taking of a person's right to sell something of value as explained in Gary Blackledge's email forwarded previously to the committee. It is apparently a constituent bill submitted by a legislator. Kent recommended a vote in opposition to support the committee.

Conde commented that by definition a judgment debtor is in distress. We are trying to protect someone who is ripe for the plucking. As a practical matter someone had gone in and had purchased the property at the sale and was spending money and time fixing the property and then a judgment debtor redeemed and they felt cheated. That buyer went to their representative and asked them to change this result. The genesis of this isn't a judgment debtor it is the buyer of the asset who doesn't want someone to reinstate themselves.

Conde further commented he was concerned about other political angles if the foreclosure is cutting off rights of a junior lienholder. This creates additional problems when redeeming rights of those lienholders would be revived. If the purpose is preserving time for a

distressed debtor to give them time to come up with money, by taking away the redemption rights you are taking away a very careful political balancing of those rights. It is not clear what group is benefiting from the taking away of this right of the judgment debtor to redeem.

Mark reported the legislature sub-committee was limited to whether or not this was the taking of a redemption right historically had over time. This bill may not have legs but the legislative committee thinks it needs to be opposed in its current form or at least have some comments. Conde further commented that the only rights the legislature can't take away are those that are constitutionally protected, which this one isn't, leaving the real question for the committee to be what is being taken away from junior lienholders as well as debtors.

Clarke commented that some of us have clients where it is an advantage to sell their redemption rights as that gives them money to move. Clarke would oppose the bill as written. Britta represented a similar purchaser who has made improvements but does think the current statute is written to allow for recovery of waste. Justin moved to vote on opposition of the bill. The committee voted to oppose.

Mark gave timelines for what is next for these bills. The legislators have until the end of March to file something and then they have until end of April to get it through at least one committee and we are assuming an early July closure. The legislative committee may be back with other things as they arise.

Judge Renn commented that historically the executive committee can arrange an email vote if necessary for these bills. Mark said protocol for request for a position or approval of a position goes out on an email with the proper form and recommendation, then the executive committee has at least two days to say we want to discuss and then it will go on.

**Newsletter:** Clarke noted that Editor Rachel Wolfgang sent a reminder about articles due by 3/6/17.

**Nominating:** Rich reported this is premature right now, nothing new to report.

**NWBI:** Clarke reported the section just received a flyer with the dates. The CLE is in Vancouver this year. CLE dates are April 7<sup>th</sup> and 8<sup>th</sup>.

**Pro Bono:**

**Portland:** Rich noted this is going along fine. Ward Greene, Retired Judge Elizabeth Perris and Rich are teaching student loan clinics at downtown meetings for thirty minutes before each clinic. Judge Perris has filed one student loan case set for trial in the fall with a Seattle judge hearing the case. The primary clinic has enough volunteers so is in good shape. Carla asked Rich how referrals are coming to him from the clinic. Rich reported that legal aide does triage and then gives flyers about student loan issues to the clinic participants.

**Other Bankruptcy Clinics & Pro Bono Task Force:** Justin reported on the task force and other clinics. An executive director is now in place in Salem so Justin will be talking with her about the clinic there. Justin expressed a huge need for legal aide in Medford but the legal aid office there is not prepared to support us right now. In Eugene, the legal aid office has new leadership with Erika Hente now acting as Regional Director of Lane County Legal Aid/OLC.

Judge Renn and Judge McKittrick are helping explore this program. Judge Renn commented he talked to Erika and she is excited to spearhead the program. Steve Behrends is out of the country right now. Justin reported all continues to move in a positive direction.

**New Lawyers:** Cassie reported things are going well. If there is interest for a co-sponsored event for a CLE and Debtor Creditor section, Cassie notes she would be able to work on the CLE committee for both sides if that was something they were interested in. Cassie believes a CLE focused on debtor/creditor issues might be welcome too. Clarke commented in the past when the new lawyers section was active they would hold pub talks where they would have a judge or lawyer come in and talk about a specific subject like tax and bankruptcy crossover issues for newer lawyers. Kent noted speakers will talk about things whether attendees already know about them or not.

**Saturday Session:** Judge Renn commented that it appeared we were at capacity for attendance this year and Loren Scott said it looked like we will actually make money this year. Judge Renn noted many positive comments about the session itself. Clarke suggested to reduce costs maybe next year we should do a brown bag lunch for the EC meeting.

#### **Public Education (fka CARE):**

**Portland:** Public Education – Britta is now both the Chair and the liaison to this group. Britta reports she has been pleased with the group's progress and a solid committee has been established. Carla, Michael and Alexz all are involved with the group. Britta has heard from several members today that they have volunteered with Financial Beginnings and their experience is top notch and it is serving the purpose intended. Britta is hoping more attorneys will volunteer now that they have received access to online programing and calendaring system.

Britta further reports the group met last month and reviewed a CENTS video at the suggestion of Ward Greene. CENTS is a nonprofit focusing on financial literacy that works closely with the Washington State Bar. The purpose was to decide whether or not to offer a program on student loan in high schools in future volunteer programs. The group is still mulling through that issue and reviewing updated CARE materials just issued last week as an alternate option.

Britta reports the next Public Education meeting is 3/8/17. The group will work on student loan issues and other financial literacy options the Public Education Committee can offer to the Oregon State Bar. Michael commented that we are a unique group with unique information to share. He shared his volunteer experience where a school teacher seemed very appreciative to have someone with great information and real world experience talking to the students. Clarke thanked Britta for taking on the Public Education committee and putting life in it.

**Public Education-Eugene:** Cassie reported she has been active in this committee but it has been slow lately. They are looking at Eugene and the presentations done using the CARE program specifically drafted by a Eugene trustee are now outdated. They are working on updating materials. National CARE just came out with new curriculum and Cassie has been reviewing and hoping to get started in the fall with new materials.

**Website:** Kent met with one of the website designers at the Oregon State Bar to discuss issues with the way WordPress has currently been set up. Kent noted in the past the website was an html creation that the section had its own programmer establish, allowing member access just to the calendar portion of the site for updates. The issue now is that there are no restrictions on access and potential compromising of the site if access is given to too many individuals. He expressed the administrative nightmare of keeping track of who has rights to site updating. He currently updates meetings as he learns of them for each committee. Kent was told that the Bar is looking at website plugins which may resolve the access issue however, it may not happen soon as the bar is still working on converting other section websites. Judge Renn reminded all liaisons that all committee meeting updates should be given to Kent. Justin commented that if a committee chair isn't going to provide the relevant information to Kent, then the Chair should have someone appointed to do so.

**Local rules:** Margot noted the Local Rules committee is working through many items including the Chapter 13 conduit plan discussed at Saturday Session. Margot provided a brief overview including possible local rules changes such as redlining amended schedules or providing notations on amended schedules so parties can quickly identify changes, and changes to the Notice of Amended Plan to clarify objection deadlines for evidentiary hearings and how those hearings are set because there has been some confusion. Margot noted the section meets the second Thursday of every month and is always happy to have more people participate.

**Award of merit:** Rich noted nothing further to report at this time but will discuss with Judge David Hercher and Judge Renn.

**Federal Bar Association:** Clarke noted this was discussed earlier. Britta asked if there was a recent federal bar association CLE that the Executive Committee recently helped to present. Justin reported it was Judge Hercher and Ann Chapman that gave a presentation on bankruptcy for non-bankruptcy lawyers. Judge Renn noted that the same program will be presented in Eugene.

**Donation requests:** Jordan reported the last donation request was at Thanksgiving for a regional court competition in Las Vegas, \$1,000 in December and \$1,000 in January which was approved with no other requests since then.

4. **Treasurers Report/Budget:** Britta stated not much to report at this time. She attended a training session with the bar about forms and the process for submitting the expense requests through the bar. She reports receiving several requests for website maintenance and Newsletter. She hasn't yet had to deal with reimbursement requests but otherwise reports all is pretty quiet.

5. **Future Meeting Dates:** At Justin's suggestion, Clarke set the next meeting date to Saturday, April 8, 2017 at 12:10 p.m. following the Northwest Bankruptcy Institute CLE. Karen Lee will arrange the meeting room at the hotel and box lunch will be provided.

The third meeting of year will be on June 29, 2017, to be held at the United States Bankruptcy Court for the District of Oregon at 4:00 p.m. Carla will arrange the conference room. Telephone access will be provided for those who cannot attend in person.

The fourth meeting of the year will be arranged in conjunction with the Annual Meeting, which needs to be prearranged with the U of O law school before a final date can be set.

The last meeting of the year will be in November 2017. Karen advised that the committee can hold the meeting as late as November 15 unless dues are going to be changed. If the committee changes dues a meeting must be held by 10/15/17. The committee will finalize a date for this meeting at a later meeting date.

6. **Other New Business.**

There was no other new business discussed.

7. **Adjournment:** The meeting was adjourned by motion of Conde Cox at approximately 2:45 p.m.

Submitted by:

Laura L. Donaldson, Secretary