

NATIONAL CONFERENCE OF BANKRUPTCY JUDGES 2023-2024 Annual Liaison Report

TO: Hon. Cynthia Norton, President

CC: Members of the NCBJ Board of Governors

FROM: Hon. Elizabeth S. Stong, ABA Liaison

DATE: June 1, 2024

I am pleased and honored to submit my Annual Liaison Report as the liaison from the National Conference of Bankruptcy Judges to the American Bar Association for the 2023-24 bar year.

Policy

The ABA considers and adopts policy at the Midyear and Annual meetings of the House of Delegates, held in February and August respectively. I have served in the ABA House of Delegates as the delegate of various entities, including the ABA Judicial Division's National Conference of Federal Trial Judges, which includes Federal district, magistrate, bankruptcy, claims, tax, and international trade court judges. Since October 2023, I have attended the ABA Midyear Meeting, including the February 2024 meeting of the House of Delegates, in Louisville, Kentucky, and served as a Delegate of the New York City Bar Association. I plan to attend the August 2024 ABA Annual Meeting as NCBJ Liaison, incoming Chair of the ABA Judicial Division's National Conference of Federal Trial Judges, and continuing Chair of the ABA Standing Committee on Continuing Legal Education.

One significant policy initiative of the ABA that concerns bankruptcy judges and the bankruptcy system is reflected in Resolution 100, adopted by the ABA House of Delegates at its midyear meeting in January 2019. In this resolution, the ABA approved "Guidelines on the Appointment and Use of Special Masters in Federal and State Civil Litigation" and specifically urged that Bankruptcy Rule 9031 be amended "to permit courts responsible for cases under the Bankruptcy Code to use special masters in the same way as they are used in other federal cases." That resolution was the product of some eighteen months of work by a working group comprised of representatives from the ABA Judicial Division and NCFTJ, the National Conference of State Trial Judges, the Lawyers Conference, the ABA Standing Committee on the American Judicial System, and several of the ABA's largest Sections including Business Law and Litigation. As part of that working group, I can attest to its far-ranging and diligent efforts to build a broad consensus in support of expanding, where appropriate, the use of court-appointed neutrals. The NCBJ Board of Governors recently considered whether to take a position on this proposed Rule amendment, and after a very thoughtful deliberative process, determined not to take a position as an entity.

Two additional resolutions addressing these issues were adopted by the ABA House of Delegates

at the ABA Annual Meeting in August 2023. The first is Resolution 516, which amends Resolution 100 and the associated guidelines, and recommends rule and legislative changes, “designed to replace the term ‘master’ or ‘special master’ with ‘court appointed neutral.’” And the second is Resolution 517, which adopts, and urges state, local, territorial, and tribal courts to adopt a Model Rule on the Use of Court-Appointed Neutrals. (While Resolution 517 does not address matters pertinent to the federal courts, it nevertheless provides useful context and background.)

Recently, the Working Group has worked closely with the ABA Office of the President in connection with ABA President Mary Smith’s submission of a letter on February 12, 2024, to the Judicial Conference of the United States - Committee on Rules of Practice and Procedure supporting the amendment of the Federal Rule of Bankruptcy Procedure 9031 to permit the use of “court-appointed masters,” sometimes called special masters, in proceedings under the Bankruptcy Code. In making this request, ABA President Smith specifically referenced the request made by Chief Judge Michael Kaplan of the District of New Jersey in his January 10, 2024 letter, for an amendment to Rule 9031 to this same effect. Former NCBJ President and retired Bankruptcy Judge Frank Bailey contributed significantly to this effort, and he and I are identified in our individual capacities by President Smith as having been among the most active participants in this process. A copy of President Smith’s letter is attached to this report.

The voices of individual members of the federal judiciary have been helpful in guiding the ABA’s and Judicial Division’s consideration of a range of policy matters of interest to bankruptcy judges. In February 2017, the NCFTJ authored and sponsored a resolution at the ABA Annual meeting concerning the need for sufficient bankruptcy judgeships to meet the demands within each district, and urging Congress to extend or convert certain temporary bankruptcy judgeships to permanent judgeships, and that resolution passed unanimously and is now ABA policy. Similarly, in August 2016, the NCFTJ authored and sponsored a resolution at the ABA Annual meeting concerning the importance of diversity on the bench, and that resolution was adopted with unanimous support.

Finally, with the thought that it may be of interest, I have attached a summary prepared by my ABA JD NCFTJ Executive Committee colleague Chief Judge Nannette Brown of the U.S. District Court for the Eastern District of Louisiana, for the Federal Judges Association newsletter.

Leadership

Bankruptcy judges are active in the leadership of the ABA, and I have done my best both to serve in meaningful leadership positions and to encourage and facilitate many of our bankruptcy judge colleagues to become actively engaged.

At the presidential appointments level, as noted above, I serve as the Chair of the ABA’s Standing Committee on Continuing Legal Education, where our tasks have included responding to the recent developments in CLE accreditation related to diversity, equity, inclusion, and

belonging goals and objectives.

In the National Conference of Federal Trial Judges, again as noted above, I presently serve as Chair Elect, and will become Chair in August 2024 - a position that was previously held by retired Bankruptcy Judge Frank Bailey. Judge Elizabeth Gunn of the District of Columbia and Judge Sandra Klein of the Central District of California are also members of the Executive Committee of the NCFTJ, and Judge Gunn is now on the “leadership track” to become Chair.

In the Business Law Section, I presently serve as co-chair of the Leadership Development Committee, and will become Chair of the Consumer Bankruptcy Committee in August. And for many years, I have served as Chair of the Pro Bono Services Subcommittee of the Section’s large and very active Business Bankruptcy Committee, where many bankruptcy judges also serve in leadership positions.

In the International Law Section, I presently serve as a member of the Section’s Council. To my surprise, I was honored to receive the Section’s Mayre Rasmussen Award for the Advancement of Women in International Law at the Section’s Annual Meeting in Washington, D.C. in April 2024.

Membership Opportunities

The ABA offers a Public Service Group Membership program that offers significantly reduced ABA dues to members, including judges, who recruit new members (at the outset of establishing the group) and participate in consolidated billing. The savings can be significant. I have organized such a group membership for the New York Federal Trial Judges and would be happy to be a resource for any NCBJ member who would like to establish a Public Service Group in their court, district, or region.

Meetings

As noted, I attended the ABA Midyear Meeting in Louisville in February 2024, the International Law Section’s Annual Meeting and Business Law Section’s Spring Meeting in April 2024, and will attend the ABA Annual Meeting in Chicago in August 2024. In addition, I will attend the Business Law Section’s Annual Meeting in September 2024, and I participate in numerous other periodic meetings of various ABA entities.

Questions?

Any questions? Please let me know and if I don't know the answer, I will find it!

E.S.S.

ABA Report for the FJA Newsletter¹

May 6, 2024

The ABA has been very active this year in proposing and adopting resolutions that have had an effect, or were proposed to have an effect, on the federal judiciary.

- ABA Resolution asking the US Supreme Court to adopt ethics rules similar to those imposed upon lower federal courts.
- ABA Resolution requiring single district judge division courts to randomly allot throughout the district certain cases filed in the single judge division.
- Proposed resolution, that ultimately failed, to allow lawyers becoming a member of one federal district court to be automatically admitted into all federal district courts.
- ABA Resolution requiring bench card to help facilitate the use of proper pronouns when addressing members of the bar and litigants.
- ABA Resolution regarding diversity and inclusion.
- The Virgin Islands Bar Association, with the support of the Young Lawyers Division, proposed in Resolution 400 at the ABA Midyear Meeting to have the ABA “Urge Congress to enact legislation to extend all civil rights laws applicable to public employees, including, but not limited to, the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 to all federal judicial branch employees; and to enact legislation to confer comparable employment benefits provided to employees of the federal legislative and executive branches, including, but not limited to, annual and sick leave, retirement benefits, and medical, dental and vision insurance to all federal judicial branch employees.”

At the urging of the NCFTJ and the Judicial Division the sponsors withdrew the resolution but promised to renew it at the annual meeting in August 2024. The Resolution tracks in part the Judicial Accountability Act of 2021 (H.R. 4827, 117th Congress) (the “JAA”), which was not passed and was strongly opposed by the JCUS and the AO. The JD has formed a task force, chaired by retired bankruptcy judge Frank Bailey (D Mass), to negotiate with the sponsors regarding the proposed resolution to obviate a need for its passage or to limit its scope. In the event the ABA House were to pass the resolution it would require the ABA Government Relations team to seek passage of parts of the JAA.

¹ This Report was prepared by Chief Judge Nannette Brown of the U.S. District Court for the Eastern District of Louisiana, who serves on the Executive Committee of the ABA Judicial Division’s National Conference of Federal Trial Judges, and is included here with her permission.

- The ABA CoLap Commission is planning to conduct another judicial wellness survey. The Commission's last study was done in 2019. They hope this survey will be broader in scope and distribution than that one. "Less than 2% of federal judges, tribal , and military judges responded to the 2019 survey, compared to 78.6% of state court judges who responded" says Sr. U.S. District Judge Ivan Lemelle, commission member and chair of its subcommittee on the judiciary. "Wellness surveys seek to identify key stressors that might impact judges and are used to develop best evidence practices for addressing them," he added. Please keep an eye out for the survey and respond promptly. The FJA will circulate the survey link once it is created.

- The ABA is involved in many issues that affect judges. Over the last year or so, ABA lawyer members have been increasingly focused on the work of federal judges. If you are interested in working directly with other federal judges who interface with lawyers on the issues that concern them about federal judges, please consider joining the ABA National Conference of Federal Trial Judges (NCFTJ) by accessing this link:

<https://www.americanbar.org/groups/judicial/membership/>