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AMERICAN BAR ASSOCIATION

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January 29, 2007

The Honorable Thomas S. Zilly
United States District Court
Western District of Washington
U.S. Courthouse
700 Stewart Street
Seattle, WA 98101-9906

Re: Proposed Attorney Discipline Amendments to the Federal Rules of Bankruptcy Procedure

Dear Judge Zilly:

Last August, in our capacity as Chairs of the American Bar Association's ("ABA" or the "Association") Business Law Section's Ad Hoc Committee on Bankruptcy Court Structure and Insolvency Processes (the "Ad Hoc Committee") and the Task Force on Attorney Discipline (the "Task Force"), respectively, we wrote to inform you that the ABA has adopted a resolution urging amendment of the Federal Rules of Bankruptcy Procedure to clarify the authority of bankruptcy courts to discipline attorneys engaging in a pattern of misconduct and to require district or bankruptcy courts to adopt local disciplinary rules and procedures with respect to attorneys practicing before the bankruptcy courts. We are pleased to learn that the Advisory Committee on Bankruptcy Rules is currently considering whether to propose rule amendments to address this issue and, if so, what form such amendments should take. We believe that it may be helpful for the Committee to be aware of some of the institutional and policy issues that informed the structure and nature of the ABA's resolution.

The ABA has long and deep experience with respect to attorney discipline issues. Ever since the adoption of the Canons of Professional Ethics in 1908, the ABA has been at the forefront of the effort to develop effective attorney disciplinary rules, standards, and processes, including the Model Rules of Professional Conduct (approved in 1983, as recently amended in 2003), the ABA Model Federal Rules of Disciplinary Enforcement (approved February 1978), the ABA Model Rules for Lawyer Disciplinary Enforcement (approved August 11, 1993, and as amended on

August 5, 1996, February 8, 1999, and August 12, 2002), and the ABA Standards for Imposing Lawyer Sanctions (as approved, February 1986, and as amended, February 1992). Each of these policies was adopted by the ABA House of Delegates following a process of debate and compromise that took into account the views of the ABA's broad membership, including both state and federal judges, both state and federal practitioners, both general practitioners and specialists, representatives of both state and local bar associations, and representatives of state bar disciplinary authorities. The amendments proposed by the Task Force and adopted by the ABA built upon the foundation of these existing ABA policies, rather than trying to reopen the debates on some of the subsidiary issues involved in framing disciplinary rules and designing disciplinary processes.

In addition, even with the strong foundation provided by the ABA's existing policies on related subjects, the Task Force and Ad Hoc Committee's recommendations on discipline of attorneys practicing in the bankruptcy courts that the ABA ultimately adopted were the product of intense debates among the members of the Task Force, and between the Task Force and other ABA committees, commissions, and divisions, including those expressly concerned with disciplinary enforcement and rules of professional conduct. Each of these groups reflects distinct perspectives and experiences based upon many years of focusing upon attorney discipline issues. In some respects, conflicting positions required tough compromises.

In the end, the Task Force opted to propose limited amendments that establish two key propositions: first, that bankruptcy courts indeed have authority to discipline the attorneys who practice before them, and second, that each district should adopt procedural rules to govern bankruptcy attorney discipline. We could not reach agreement on a number of issues, such as the appropriate role for the U.S. Trustee, and the composition of the panel in single-judge courts. We also believe that the size of the court and the bar matter: what may work for a single judge court with 25 regular bankruptcy practitioners may not be at all effective or practical for a 21-judge court with a bar of thousands. But we did not want to become enmeshed in such sticky questions. Instead, we unanimously agreed to focus on these two key principles.

The ABA urges the Committee to focus upon establishing these first principles *first*. Trying to develop too detailed a set of rules may stir up unnecessary antagonisms and cause the rules to be tabled. If an initial set of amendments is adopted along the lines proposed by the Task Force, then local experimentation and development may well yield better ideas for more detailed national rules to be promulgated in the future.

Thank you for considering the views of the ABA on this important subject. If you have any questions or if we can be of any further assistance to the advisory committee in its work, please contact either William H. Schorling at (215) 665-5326, william.schorling@bipc.com, or Judith Greenstone Miller at (248) 727-1429, jmiller@jaffelaw.com, or the ABA's senior legislative counsel for bankruptcy issues, Larson Frisby, at (202) 662-1098, frisbyr@staff abanet.org.

Very truly yours,

William H. Schorling
Chair
Section of Business Law
Ad Hoc Committee on Bankruptcy
Court Structure and Insolvency Processes

Judith Greenstone Miller
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Task Force on Attorney Discipline