

UNITED STATES BANKRUPTCY COURT
Middle District of North Carolina
Post Office Box 4798
Winston-Salem, North Carolina 27115-4798

10-BK-N



Thomas W. Waldrep, Jr.
Bankruptcy Judge

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December 22, 2010

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BANKRUPTCY ADMINISTRATOR
MIDDLE DISTRICT OF NC
Winston-Salem, NC

Honorable Eugene R. Wedoff
United States Bankruptcy Court
Everett McKinley Dirksen
United States Courthouse
219 South Dearborn Street
Chicago, IL 60604

Re: Suggestion of Bankruptcy Rules for Formation of Creditors' Committee

Dear Gene:

As you may be aware, Judge Mary Walrath recently wrote an opinion that dealt with the unethical behavior of potential committee counsel in a Chapter 11 case. See In re Universal Bldg. Products, Inc., slip op. (Bankr. D. Del. Nov. 4, 2010) (2010 WL 4595503). Attorneys who had no prior relationship with any of the creditors on the committee used a surrogate to solicit the committee members to vote for them as committee counsel. Id. at 2-4.

Rule 7.3 of Delaware's Rules of Professional Responsibility provides: "A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted: (1) is a lawyer; or (2) has a family, close personal, or prior professional relationship with the lawyer." Del. Lawyers' R. of Prof. Cond. 7.3. Similar rules exist in each state.

In Universal Bldg. Products, Judge Walrath determined that "there are sufficient facts to suggest that AF and EG did violate Rule 7.3 and Rule 8.4 of the Model Rules of Professional Conduct and of Delaware's Rules of Professional Responsibility. The Court finds this conduct sufficient reason to disqualify AF and EG from serving as counsel to the Committee in this case." Id. at 8. Judge Walrath concluded:

The Court hopes that by requiring disclosure of the practice of using others to solicit proxies to act at a committee formation meeting will go a long way to discourage that improper practice. The Court would also urge the UST to consider

implementing procedures to reduce the likelihood of undue influence on the decision of a committee to hire professionals. Specifically, the Court recommends that the UST adopt the suggestion by Dr. Liu that the creditors be kept in a separate room from prospective professionals (who do not represent a client eligible to serve on the Committee) before the committee formation meeting. Further, the UST might consider amending the questionnaire it sends to prospective committee members to include questions regarding whether they were solicited by anyone in connection with the case.

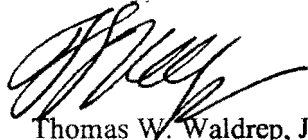
Id. at 12.

I write to suggest that the Advisory Committee on Bankruptcy Rules consider new bankruptcy rules that provide more clarity in the committee selection process and discourage the unethical behavior of counsel. In my former career as an attorney, I experienced firsthand that those attorneys who ignored, even flaunted, the ethical boundaries placed on them by the applicable rules of professional responsibility were often rewarded by their selection as committee counsel. It often seemed as if the selection of committee counsel was determined before the first meeting of creditors was held. I applaud Judge Walrath's opinion in Universal Bldg. Products and would not hesitate to do the same if the situation arises in one of my cases.

Based on my experience, here is what I believe happens in larger cases. Committee members are solicited directly or indirectly by attorneys who have no prior relationship with them. Committee members are unaware of the ethics rules, so they do not complain. Attorneys who apply for the job but are not selected as committee counsel are then asked to serve as local counsel for the committee. These attorneys observe or suspect unethical behavior by other attorneys in the selection process, but they do not complain because they know that it would eliminate them from consideration as local counsel.

Thank you for your consideration of my suggestion.

Sincerely,



Thomas W. Waldrep, Jr.

cc: Professor Elizabeth Gibson
cc: Honorable Mary F. Walrath
✓cc: Michael D. West, Bankruptcy Administrator