



AMERICAN  
BANKRUPTCY  
INSTITUTE

## 2017 Winter Leadership Conference

### **Consumer Commission Session: Parts I and II**

CONCURRENT SESSION

2017

# The ABI Commission on Consumer Bankruptcy



## MISSION

*The ABI Commission on Consumer Bankruptcy is charged with researching and recommending improvements to the consumer bankruptcy system that can be implemented within its existing structure. These changes might include amendments to the Bankruptcy Code, changes to the Federal Rules of Bankruptcy Procedure, administrative rules or actions, recommendations on proper interpretations of existing law and other best practices that judges, trustees and lawyers can implement.*

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*Committee Chair: David W. Houston, III  
Reporter: Robert M. Lawless*

## ABI Commission on Consumer Bankruptcy

### Fact Sheet

- Created by the executive committee of ABI's Board of Directors in December 2016.
- Comprised of a 17-member expert panel who will examine the consumer bankruptcy system and issue a report with recommended improvements that can be implemented within the existing structure.
- The Commission is utilizing an open, information-gathering process that will allow interested parties across the consumer bankruptcy spectrum to provide input.
- Co-chaired by retired Bankruptcy Judges William Houston Brown and Elizabeth Perris. Combined, Brown and Perris have 50 years combined judicial experience.
- The Commission Reporter is Robert Lawless, the Max L. Rowe Professor of Law and co-director of the Program on Law, Behavior & Social Science at the University of Illinois College of Law.
- The Commission is supported by three committees: the Committee on Case Administration and the Estate, the Committee on Chapter 7, and the Committee on Chapter 13.
- Each committee is comprised of five commissioners and 10 other bankruptcy experts.
- For each committee, Members' Advisory Groups will be formed to receive input and provide perspectives from a wide variety of stakeholders. Any member of ABI can join a Members' Advisory Group.
- All interested individuals or groups will soon be able to submit comments, suggestions and information via the Commission's website (<http://consumercommission.abi.org>). The website will also contain committee meeting information and drafts of committee materials. Interested individuals also can email the Commission at [ConsumerCommission@abiworld.org](mailto:ConsumerCommission@abiworld.org).
- The Commission will convene open meetings over the next two years to gather and review stakeholder input. Meeting details will be posted to the Commission website and via Twitter ([@ConsumerBKComm](https://twitter.com/ConsumerBKComm)).
- Committee recommendations that are approved by a two-thirds majority of the Commission will become part of the Commission's final report.
- The final report will be released at ABI's Winter Leadership Conference in December 2018 in Scottsdale, Ariz.

**LIST OF TOPICS FOR  
ABI'S COMMISSION ON CONSUMER BANKRUPTCY**

Please find the overall list of topics to be considered by the ABI Commission on Consumer Bankruptcy. The topics have been grouped within each of the three corresponding committees that support the Commission: the Committee on Case Administration and the Estate, the Committee on Chapter 7 and the Committee on Chapter 13. Each committee, comprised of five commissioners and 10 non-commission members, will take the lead in addressing the following topics:

*Committee on Case Administration & the Estate*

1. Student loans
2. Roles and responsibilities of attorneys
  - a. Unbundling of services
  - b. Payment of chapter 7 debtors' attorneys
  - c. Use of no-look fees and other issues regarding the amount of attorney fees
  - d. Use of appearance counsel for both debtors and creditors
  - e. Payment of chapter 13 attorney fees in the plan
3. Roles and responsibilities of U.S. Trustee/Bankruptcy Administrator
  - a. Supervision and appointment of chapter 7 and chapter 13 trustees
  - b. Inconsistent application of statutes
  - c. Section 341 practice
4. Systems issues
  - a. New bankruptcy forms
  - b. Number of bankruptcy judgeships; status of temporary judgeships
  - c. CM/ECF modernization
5. Notice and service issues
  - a. FRBP 7004(h)/Insured Depository Institutions
  - b. Notice lists
6. Prepetition repossession

- a. Duty to return collateral
- b. Postpetition fees and expenses for retained collateral
- c. Postpetition sale of collateral

7. Exemptions

- a. Trustee's sale of exempt property
- b. Postpetition changes in value in estate assets
- c. Addressing bad faith conduct under *Law v. Siegel* and *Schwab v. Reilly*
- d. Relocation and application of state exemption law

*Committee on Chapter 7*

- 1. Prepetition credit counseling and postpetition financial management course
- 2. Chapter 7 trustees
  - a. Compensation of chapter 7 trustees
  - b. Hiring of trustee law firms
  - c. Chapter 7 trustee specialization
- 3. Dischargeability and discharge issues
  - a. "Return" in section 523(a)'s unnumbered paragraph
  - b. Remedies for discharge violations
- 4. Means test
  - a. Inconsistency between above- and below-median debtors
  - b. Application to converted cases
  - c. Arbitrary distinctions in application -- different types of debtors; debts vs. lack of debt
- 5. Property of the estate
  - a. Debtors' right of first refusal for proposed sale by trustee
  - b. Unliquidated estate property
  - c. Debtor disclosure of causes of action
- 6. Surrender

- a. Creditor indifference toward return of collateral, refusal to accept surrendered collateral
- b. Debtor's duty to cooperate?
- c. Relationship to automatic stay

7. Redemption

- a. Time limit on redemption
- b. Oversight of redemption lenders

8. Reaffirmation

- a. Leases & reaffirmation
- b. Lender notices & reaffirmation

*Committee on Chapter 13*

1. Chapter 13 eligibility

- a. Debt limits
- b. Section 109(g) refiling

2. FRBP 3002.1 issues

3. Home-owner issues

- a. Underwater liens
- b. Loan modifications in bankruptcy
- c. HOA fees

4. Chapter 13 plans

- a. Emergency fund
- b. Secured claim matters: proof of claim vs. plan
- c. Direct mortgage claim payment by debtor in chapter 13 plans
- d. Conduit plans
- e. Interest rates in the plan
- f. National plan form

- g. Strict compliance with the 60-month rule
- 5. Credit reporting and bankruptcy
- 6. Local legal culture and chapter 13
  - a. Role of local legal culture in chapter choice
  - b. Racial disparities in the use of chapter 13
- 7. Section 1306, scope of estate property in unclosed cases

Persons submitting written statements or making public statements at Commission meetings are welcome to address any of the Commission's overall topics. Experts/interested stakeholders within a given topic area are encouraged to provide their input to the corresponding Committee that will be addressing that topic. Written statements can be submitted via e-mail at [ConsumerCommission@abiworld.org](mailto:ConsumerCommission@abiworld.org).

To make an oral statement at a Commission or Committee meeting, be sure to check the [Commission's website](#) for scheduling and submission guidance.

# AMERICAN BANKRUPTCY INSTITUTE JOURNAL

*The Essential Resource for Today's Busy Insolvency Professional*

## Feature

BY HON. WILLIAM H. BROWN, HON. ELIZABETH L. PERRIS AND PROF. ROBERT M. LAWLESS

### ABI Announces Commission on Consumer Bankruptcy



**Hon. William H. Brown (ret.)**  
U.S. Bankruptcy Court  
(W.D. Tenn.)



**Hon. Elizabeth L. Perris (ret.)**  
U.S. Bankruptcy Court  
(D. Ore.)



**Prof. Robert M. Lawless**  
University of Illinois  
College of Law

**Editor's Note:** For more information on the Commission, visit [consumercommission.abi.org](http://consumercommission.abi.org).

In our years as bankruptcy lawyers, judges and students of bankruptcy law, we like to think that we have learned a few things. Most of those lessons are not bankruptcy-specific: Times change, and what was once sparkly and new becomes outdated.

We remember 1979, when the cutting-edge technology for consumers was a Tandy TRS-80 Micro Computer available from RadioShack. The Dow closed the year at 873 points, and the Fed's discount rate was 13.8 percent. We also remember 2005, when the best-selling cellphone was a Nokia 1110 that had a black-and-white display with a backlight! The Dow had climbed to 10,348 points. The Fed's discount rate was 3.8 percent, and soundly invested retirement portfolios still included fixed-income assets that offered decent interest rates.

Bankruptcy lawyers, of course, remember 1979 and 2005 as the years when the Bankruptcy Reform Act and the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) took effect. Just like all that was once sparkly and new, the Bankruptcy Code is pushing 40 years old. Even the major changes wrought by BAPCPA are 12 years old. The world has changed a lot in that time, both technologically and in the financial markets. Consequently, the legal foundations of the consumer bankruptcy system are creaking.

#### The ABI Commission's Charge and Key Players

ABI has stepped up to take a leadership role in improving the consumer bankruptcy system. In December 2016, the executive committee of the ABI Board of Directors created the ABI Commission on

Consumer Bankruptcy. The Commission will begin its work in April. There are ways for all ABI members to be involved. ABI President-Elect Hon. **Eugene R. Wedoff** (ret.) has charged the Commission with

recommending improvements to the consumer bankruptcy system that can be implemented within its existing structure. These changes might include amendments to the Bankruptcy Code, changes to the Federal Rules of Bankruptcy Procedure, new administrative rules or actions, recommendations on proper interpretations of existing law, and other best practices that judges, trustees, and lawyers can implement.

The Commission will certainly take on tough issues that might require statutory amendments. However, one focus will be on identifying practically workable reforms, such as changes that can be implemented by national or local rules committees, in the U.S. Trustee's Office, in the standing orders or decisions of local courts, and in the offices of bankruptcy trustees and attorneys. The Commission also will emphasize consensus and compromise among different stakeholders in the system. The Commission intends to release a final report containing its recommendations at ABI's Winter Leadership Conference in December 2018 in Scottsdale, Ariz.

This article's authors are the co-chairs and reporter for this new Commission. Judges Brown and Perris are retired bankruptcy judges with 49 years of combined experience in the bankruptcy courts of Tennessee and Oregon and will supervise the Commission's overall activities as co-chairs. Prof. Lawless has been teaching and writing about bankruptcy law for 24 years. As reporter, he will assist in operations and draft the Commission's final report.

President-Elect Wedoff worked with us to assemble an impressive roster of commissioners.

The Commission will be comprised of 15 experts from all over the nation with experience in all different parts of the consumer bankruptcy system and in representing diverse stakeholders. Commissioners include **Michael T. Bates** of JPMorgan Chase Bank, NA (Lewisville, Texas), ABI Vice President-Publications **Alane A. Becket** of Becket & Lee, LLP (Malvern, Pa.), **Edward C. Boltz** of The Law Offices of John T. Orcutt, PC (Durham, N.C.), **Rudy J. Cerone** of McGlinchey Stafford, PLLC (New Orleans), Bankruptcy Judge **Randall L. Dunn** (ret.) (Portland, Ore.), Chapter 13 Trustee **Henry E. Hildebrand, III** (Nashville, Tenn.), **Ariane Holtschlag** of The Law Office of William J. Factor, Ltd. (Chicago), **David W. Houston, III** of Mitchell, McNutt & Sams (Aberdeen, Miss.), **Richard I. Kilpatrick** of Kilpatrick & Associates, PC (Auburn Hills, Mich.), Prof. **Bruce A. Markell** of the Northwestern University School of Law (Chicago), **Ronald R. Peterson** of Jenner & Block LLP (Chicago), Prof. **Katherine M. Porter** of the University of California at Irvine School of Law (Irvine, Calif.), **John Rao** of the National Consumer Law Center (Boston), **Wendell J. Sherk** (St. Louis) and **Tara Twomey** of the National Consumer Bankruptcy Rights Center (Carmel, Calif.).

The Commission will also include nonvoting *ex officio* members in ABI, including ABI Executive Director **Samuel J. Gerdano**, Judge Wedoff, ABI Vice President-Development **Edward T. Gavin** of Gavin/Solmonese LLC (Wilmington, Del.), **Clifford J. White III**, director of the Executive Office for U.S. Trustees, and a representative of the Internal Revenue Service.

### Commission Structure and Procedures

The Commission workhorses will be three committees: the Committee on Chapter 7, the Committee on Chapter 13, and the Committee on Case Administration and the Estate. Judge Wedoff again worked with us to identify the committee members. Each committee has a total of 15 persons, five commissioners and 10 other bankruptcy professionals, again chosen for their breadth of professional experience and geographic diversity. Three former bankruptcy judges will chair the committees: **Randall Dunn** will chair the Committee on Chapter 7, **David Houston** will chair the Committee on Chapter 13, and Prof. **Bruce Markell** will chair the Committee on Case Administration and the Estate. Under the leadership of these committee chairs, the committees already have started their organizational work.

The committees will identify the issues that the Commission will consider. In this sense, the committees will set the agenda for the Commission. To prevent overlap, the co-chairs and reporter will coordinate the work of the three committees such that each issue will be taken up by only one committee. The committee actions will be forwarded to the Commission for its review, debate and consideration.

Committee recommendations that are approved by a two-thirds majority of the Commission will become part of the Commission's report.

The process was designed with the goal of reaching middle-ground solutions about which many stakeholders can agree. The Commission and its committees should act as checks on each other. The hope is that the resulting dialogue will encourage compromise and responsible professional discourse even on issues where differing views may be strongly held.

### Get Involved

The Commission process also has been designed to be very open and communicative. As this article goes to press, ABI is developing a website that will house all of the Commission's materials and will be available to the public. Anyone will be able to submit written comments to the Commission through the website. You can email the Commission at [consumercommission@abiworld.org](mailto:consumercommission@abiworld.org).

ABI members also will be able to sign up for the Members' Advisory Groups for each Committee. Participants in the Members' Advisory Groups will be continually informed about developments in the committee and in the Commission generally, will get notices as to new documents that have become available on the Commission's website, and receive notice of open meetings for the committees and the Commission. The Members' Advisory Groups will be particularly encouraged to attend and participate at the open meetings. Look for announcements at the Commission's website about how to sign up for the Members' Advisory Groups.

The first open meeting of the ABI Consumer Bankruptcy Reform Commission will take place at the National Association of Consumer Bankruptcy Attorneys (NACBA) Annual Meeting on May 4-7 in Orlando, Fla. The Commission is working with other organizations to hold meetings at events where bankruptcy professionals gather. Look for announcements at the ABI website ([abi.org](http://abi.org)) for further details about these events.

### The Road Ahead

There are undoubtedly many diverse views about how the bankruptcy system can be made to work better. In crafting the Commission's structure, we paid special attention to ABI's mission as a non-partisan, multidisciplinary organization dedicated to research on matters related to insolvency. We hope the Commission will offer not only a forum for vigorous and respectful debate about these views, but also a process by which to reach consensus wherever possible. The result would be recommendations that will make the system work better for debtors, creditors and the professionals who work within it. **abi**

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*Hon. William Houston Brown retired in 2006 as a U.S. Bankruptcy Judge for the Western District of Tennessee. Hon. Elizabeth Perris was a U.S. Bankruptcy Judge for the District of Oregon from 1984-2015. Robert Lawless is the Max L. Rowe Professor of Law and co-director of the Program on Law, Behavior and Social Science at the University of Illinois College of Law.*

# AMERICAN BANKRUPTCY INSTITUTE JOURNAL

*The Essential Resource for Today's Busy Insolvency Professional*

## Legislative Update

### ABI Consumer Commission Holds Hearing at NACBA Annual Meeting

**Editor's Note:** *The following are excerpts from public statements presented to the ABI Commission on Consumer Bankruptcy at a hearing held during the annual meeting of the National Association of Consumer Bankruptcy Attorneys (NACBA) on May 6 in Orlando, Fla. The Commission's Chapter 13 Committee will conduct a public hearing on July 15 in Seattle as part of the National Association of Chapter 13 Trustee's annual meeting. A full schedule of the Commission's meetings can be found on the Commission's website at [ConsumerCommission.abi.org](http://ConsumerCommission.abi.org).*

#### Statement of Bradford W. Botes (Birmingham, Ala.)

I have practiced consumer bankruptcy law for more than 30 years. My firm has had offices in Alabama, Mississippi, Tennessee, Florida, North Carolina and Texas. I was one of NACBA's first 50 members, served on its board of directors and acted as its first full-time executive director.

Based upon my experience, it is my opinion that the BAPCPA requirements requiring credit counseling prior to bankruptcy and financial management post-filing and prior to discharge have become exactly what we had predicted they would: a waste of a debtor's time and resources with little, if any, benefit to debtors or the bankruptcy system as a whole. An entirely new bureaucratic industry has in fact been created, which slows down the administration of cases and has created new unnecessary costs. In my opinion, the Commission should recommend that these requirements be eliminated post-haste.



**Bradford W. Botes**

#### Statement of Cathleen Moran (Mountain View, Calif.)

I've practiced bankruptcy law in the Silicon Valley of the Northern District of California for 37 years. I've been a bankruptcy specialist, certified by the California State Bar Board of

Legal Specialization for 21 years. I've divided my comments into two general categories: the specific and the systemic. Both need change if bankruptcy is going to realize its potential to enable individuals to lead financially stronger lives.

I'm sure you'll hear from others much about student loan discharge and the need for a better balance between the interests of student loan lenders and guarantors and the interests of borrowers. Short of changing the test for the discharge of student loans, there are two lesser changes that would aid borrowers in dealing with their loans.



**Cathleen Moran**

One, recognize student loans as long-term debt on which payments can properly be maintained throughout the life of a chapter 13 plan. Allow separate classification of student loans in the plan. Alternatively, permit debtors to continue to service student loans directly. Where I practice, neither are presently permitted. Instead, we effectively require debtors to default on their student loans and incur significant collection costs in addition to the oft-crippling loans themselves.

As to chapter 13, no credible financial counselor would craft a budget for a client that had them spending every penny they take in. Yet that's how our chapter 13 calculation of monthly disposable income works. The means test makes no allowance for routine replacement of household goods and the repair of appliances, much less an unexpected or catastrophic event. Without an approved mechanism for an emergency fund, a bump in the financial road leads to plan defaults, the need for plan modification, additional attorneys' fees or dismissal. Even when a family can get through five years without some unplanned expense, the system has missed an opportunity to build a savings habit. Three or five years of practice at saving would be more powerful in the future lives of debtors than a one-hour financial management class.

The bankruptcy system contributes to our national attitude that retirement will take care of itself. That's an exercise in wishful thinking. Saving for retirement should be a rea-

sonable and necessary living expense. To conduct ourselves as though it isn't is to perpetuate the hope that old age will take care of itself, magically. Our current system allows only retirement savings where contributions are mandatory; yet fewer and fewer individuals have the kind of employment that requires retirement savings. Early plan payoff chapter 13, as it operates, is divorced from financial common sense when it resists early payoff of chapter 13 plans. Whether by reason of improving finances or an unexpected windfall, or the willingness to reach into exempt assets to fund plan payoff, too many chapter 13 trustees oppose early payoff. What creditor would reject payment of \$100 now in favor of 10 future payments of \$10?

Chapter 13's approach to early payoff is an expression of the ACP as a sentence of financial incarceration to be served. With a system that exposes any improvement in circumstances to capture for the benefit of creditors, it becomes harder for counsel to pitch the advantages of chapter 13 over alternatives. Chapter 20 looks better. Debt settlement, which fixes the payment schedule at the outset, look better. The risks of chapter 13 are becoming disproportionate to the benefits of the shrunken chapter 13 discharge. Conditioning access increases costs disproportionately.

The misbegotten idea that consumers have been flocking to bankruptcy in an irresponsible attempt to avoid paying their debts has led to the enormous increase in the cost of bankruptcy representation. The means test, the need for supporting documents and the threat of having to defend your need for bankruptcy against a taxpayer-funded lawyer from the Office of the U.S. Trustee with a prosecutorial mentality makes bankruptcy difficult for the unsophisticated or the stressed consumer. My sense is that trustees feel that their supervisors expect them to act as inquisitors. Yet the statistics about "abusive filings" suggests that this is a remedy without an ailment. We've just succeeded in pricing bankruptcy out of the reach of too many.

While the Bankruptcy Code and pronouncements from the bench mouth the platitudes about compensating counsel for consumer debtors consistent with fees paid to lawyers in other fields, it doesn't happen consistently enough to attract capable and committed lawyers to this field. Court-sanctioned "flat fees" are crafted not so much to pay the average value of services, but rather the minimum that a consumer case could cost. Judges apparently fear overpaying the journeyman lawyer more than they do starving the capable out of the field. The issue of fees for representation after plan completion but before discharge, such as lien-stripping and Rule 3002.1, is without guidance or procedures.

### Statement of Wayne A. Silver (Mountain View, Calif.)

I've been practicing bankruptcy law in the Northern District of California for more than 30 years. I chair the California State Bar's Bankruptcy Law Advisory Commission. My practice of late focuses on bankruptcy litigation, including bankruptcy crimes, and that's where I will confine my comments. The challenge that debtors and their bankruptcy attorneys face in the litigation arena is the systemic bias against them. The deck is stacked in favor of creditors, and it's not fair.

Let's face it. Most debtors can barely scrape together a minimum fee to pay a competent bankruptcy attorney. Their limited funds cover preparation of the bankruptcy schedules, an appearance at the meeting of creditors, maybe a lien-strip or reaffirmation. But what happens when a well-heeled creditor files a nondischargeability adversary proceeding against a debtor? Or when a debtor has to defend an 11 U.S.C. § 727 action for denial of discharge brought by the U.S. Trustee, perhaps where the civil action is also a discovery tool for a parallel but undisclosed criminal investigation?

**Most debtors can barely scrape together a minimum fee to pay a competent bankruptcy attorney. Their limited funds cover preparation of the bankruptcy schedules, an appearance at the meeting of creditors, maybe a lien-strip or reaffirmation.**

There is no safe harbor in the Federal Rules of Bankruptcy Procedure to level the playing field for debtors; they are treated the same as any other litigant in federal court. That's because most of the Federal Rules of Bankruptcy Procedure adopt the Federal Rules of Civil Procedure (FRCP) verbatim. That means that all of the FRCP 26 initial disclosure rules apply, including the rules covering electronically stored information (ESI). Add all of the FRCP 16 pre-trial rules, and the debtor (and often his/her bankruptcy attorney) is suddenly overwhelmed. These are serious legal matters, and debtors should have access to qualified legal counsel to assist them.

There are two things that could be done to address these problems. First, provide a streamlined discovery and pre-trial procedure in nondischargeability and denial-of-discharge adversary proceedings, and make that streamlined procedure the default in consumer debtor cases. Next, incentivize qualified attorneys to represent debtors in these kinds of cases. For example, how about awarding attorneys' fees to the debtor if he/she prevails, and making sure the award is payable in "new money," not just added to the creditor's claim. Or allocating a portion of bankruptcy case filing fees (or chapter 11 U.S. Trustee fees) to fund a legal services program that provides litigation counsel to debtors? These are a few ideas to deal with a difficult issue. **abi**

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*The American Bankruptcy Institute is a multi-disciplinary, non-partisan organization devoted to bankruptcy issues. ABI has more than 12,000 members, representing all facets of the insolvency field. For more information, visit [abi.org](http://abi.org).*

# What's Happening at ABI

## Consumer Commission Identifies Study Issues and Sets July Public Hearing Date

**A**BI's Commission on Consumer Bankruptcy is charged with researching and recommending improvements to the consumer bankruptcy system that can be implemented within its existing structure. These changes might include amendments to the Bankruptcy Code, changes to the Federal Rules of Bankruptcy Procedure, administrative rules or actions, recommendations on proper interpretations of existing law, and other best practices that judges, trustees and lawyers can implement. The Commission's next open meeting will be held on July 15 at the NACCTT Annual Meeting at the Sheraton Seattle Hotel in Seattle from 4-5:30 p.m. PT, and is a field hearing for the Chapter 13 Committee. More information will be posted online at [ConsumerCommission.abi.org](http://ConsumerCommission.abi.org).

The Consumer Commission has also established an overall list of topics to be considered. The topics have been grouped within each of the three corresponding committees that support the Commission: the Committee on Case Administration and the Estate, the Committee on Chapter 7 and the Committee on Chapter 13. Each committee, comprised of five Commissioners and 10 non-Commission members, will take the lead in addressing the following topics:

### Committee on Case Administration and the Estate

1. Student loans;
2. Roles and responsibilities of attorneys, including (a) the unbundling of services, (b) payment of chapter 7 debtors' attorneys; (c) the use of no-look fees and other issues regarding the amount of attorneys' fees; (d) the use of appearance counsel for both debtors and creditors; and (e) the payment of chapter 13 attorneys' fees in the plan;
3. The roles and responsibilities of U.S. Trustees/Bankruptcy Administrators, including (a) the supervision and appointment of chapter 7 and chapter 13 trustees; (b) inconsistent application of statutes; and (c) § 341 practice;
4. Systems issues, including (a) new bankruptcy forms; (b) the number of bankruptcy judgeships and status of temporary judgeships; and (c) CM/ECF modernization;
5. Notice and service issues, including (a) Bankruptcy Rule 7004(h)/insured depository institutions and (b) notice lists;
6. Pre-petition repossession, including (a) the duty to return collateral; (b) post-petition fees and expenses for retained collateral; and (c) the post-petition sale of collateral; and
7. Exemptions, including (a) the trustee's sale of exempt property; (b) post-petition changes in value in estate assets; (c) addressing bad-faith conduct under *Law v. Siegel* and *Schwab v. Reilly*; and (d) the relocation and application of state exemption law.

### Committee on Chapter 7

1. Pre-petition credit counseling and a post-petition financial-management course;

2. Chapter 7 trustees, including (a) the compensation of chapter 7 trustees; (b) the hiring of trustee law firms and (c) chapter 7 trustee specialization;
3. Dischargeability and discharge issues, including (a) the "return" in § 523(a)'s unnumbered paragraph and (b) remedies for discharge violations;
4. Means tests, including (a) the inconsistency between above- and below-median debtors; (b) the application to converted cases; and (c) arbitrary distinctions in application (different types of debtors and debts vs. lack of debt);
5. Property of the estate, including (a) a debtor's right of first refusal for a proposed sale by trustee; (b) unliquidated estate property; and (c) a debtor's disclosure of causes of action;
6. Surrender, including (a) creditor indifference toward the return of collateral and/or a refusal to accept surrendered collateral; (b) a debtor's duty to cooperate; and (c) the relationship to automatic stay;
7. Redemption, including (a) a time limit on redemption; and (b) the oversight of redemption lenders; and
8. Reaffirmation, including (a) leases and reaffirmation and (b) lender notices and reaffirmation.

### Committee on Chapter 13

1. Chapter 13 eligibility, including (a) debt limits; and (b) § 109(g) refiling;
2. FRBP 3002.1 issues;
3. Homeowner issues, including (a) underwater liens; (b) loan modifications in bankruptcy; and (c) homeowners' association fees;
4. Chapter 13 plans, including (a) emergency funds; (b) secured claim matters such as proof of claim vs. plan; (c) direct mortgage claim payments by a debtor in chapter 13 plans; (d) conduit plans; (e) interest rates in the plan; (f) national plan form; and (g) strict compliance with the 60-month rule;
5. Credit reporting and bankruptcy;
6. Local legal culture and chapter 13 such as (a) the role of local legal culture in chapter choice and (b) racial disparities in the use of chapter 13; and
7. Section 1306 and the scope of estate property in unclosed cases.

### Getting Involved

Persons submitting written statements or making public statements at Commission meetings are welcome to address any of the Commission's overall topics. Experts/interested stakeholders within a given topic area are encouraged to provide their input to the corresponding Committee that will be addressing that topic. Written statements can be submitted via email at [ConsumerCommission@abiworld.org](mailto:ConsumerCommission@abiworld.org). To make an oral statement at a Commission or Committee meeting, check the Commission's website at [ConsumerCommission.abi.org](http://ConsumerCommission.abi.org) for scheduling and submission guidance.

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