

**DEBTOR/CREDITOR RIGHTS COMMITTEE  
REPORT PREPARED FOR THE SEPTEMBER 26, 2013 COUNCIL MEETING**

**1. Next Scheduled Meeting of the Committee.**

The next scheduled meeting of the Committee is on Tuesday, November 19, 2013, with dinner commencing at 6:00 p.m. and business meeting at 6:30 p.m. at the offices of Honigman Miller Schwartz and Cohn LLP, 39400 Woodward Avenue, Suite 101, Bloomfield Hills, MI 48304.

**2. Council Approval.**

Attached is a letter from Robert H. Roether seeking pro bono assistance for victims of attorney misconduct when the attorney becomes a debtor in bankruptcy. We would like to identify attorneys with expertise on that issue, who, because of their expertise, would cost less than an attorney without experience in the issue to represent such victims (but not on a pro bono basis). We would use both the Section's and the Committee's list serv, to ask such attorneys to identify themselves to the co-chairs. The list would then be provided to Mr. Roether, and to others making similar inquiries.

**3. Membership.**

The Committee communicates regularly with its membership through its list serv, with announcements of Committee events, case law alerts, and announcements of events of interest to bankruptcy and insolvency law practitioners. This increases the Committee's profile. In addition, holding regular meetings and educational events increases the interest of the bar in becoming members. We regularly receive inquiries from bar members about joining the Committee and respond immediately to reach out to the individuals.

**4. Accomplishments Toward Committee Objectives.**

The Committee participated in drafting proposed amended MCR 2.621 and 2.622 regarding the appointment of receivers. The Michigan Supreme Court sent the rules out for public comment, through September 1, 2013 deadline. The Council approved favorable comment on the rules at the June 8, 2013 meeting.

There were 18 comments, in total, with the Family Law Section and some individual attorneys joining in favoring the rules. No comments opposed the rules in major part, but several judges, judicial groups, Janet K. Welch, Executive Director of the State Bar, and five individual lawyers opposed the provision in the proposed rules that would require the Court to defer to the movant's choice of a receiver unless the Court makes findings as to the reason for rejecting the choice. These commentators all took the position that the Court should have complete discretion to choose the receiver. James Allen of Miller Canfield made

the suggestion that if the parties to the litigation agreed on the selection of the receiver (which is common), the Court should defer, otherwise the Court should select. There were other comments limited to discrete portions of the rule.

**5. Meeting and Programs.**

The Committee, along with the Small Business Forum and the Commercial Litigation Committee, presented a webinar organized by Douglas Toering on August 14, 2013 on The Detroit Bankruptcy: Navigating Uncharted Waters For Your Client. Fifty-five persons participated, and the materials were posted on the Section's website.

The Committee is co-sponsoring a tribute dinner for Bankruptcy Judge Steven R. Rhodes. Because of his appointment as the Bankruptcy Judge for the City of Detroit case, the tribute dinner is being postponed to December 2014.

**6. Publications.**

The Committee provided six articles for the Spring 2013 edition of the Michigan Business Law Journal.

**7. Methods of Monitoring Legislative/Judicial/Administrative Developments and Recommended Action.**

As a bar group active in insolvency related issues, the Committee is often asked to participate in judicial and administrative developments, such as assisting in the drafting of the proposed amendments to the receivership rules, see Section 4 above, and to co-sponsor the dinner honoring retiring Judge Rhodes, see Section 5 above. We review new statutes, rules and cases at our meetings.

In addition, our members are active in informing us about legal advances, and will draft or assist in drafting case alerts for the Committee's list serv. Also, the co-chairs individually and through bar groups monitor new developments to discuss at our meetings or in alerts.

**8. Miscellaneous.**

N/A

Judy B. Calton, Co-Chair

Judith Greenstone Miller, Co-Chair

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September 9, 2013

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RE: Proposal to aid client victims of attorney thefts

Dear Mr. Nader, Ms. Calton, Ms. Miller and Mr. Gilbert:

The principal part of my practice is plaintiff's legal malpractice. In that capacity, I've had a number of cases where attorneys have stolen their client's personal injury settlement moneys.

When that happens, the client is never quite made whole. The State Bar Client Protection Fund (CPF) usually may reimburse the "client's portion" but with limitations. The CPF will not compensate for treble damages for conversion. Nor will it compensate for the "attorney fee" portion of the theft even though that portion may be forfeited. It may deduct "liens" of doubtful basis.

I've now run into two cases where the larcenous former attorney filed for bankruptcy protection. If you handle bankruptcy matters, you're probably thinking that a debt based on a crime can't be discharged. But, that only has reality if the client has the services of a bankruptcy lawyer to challenge the discharge. Not only am I not a bankruptcy lawyer, but in some cases the services of a bankruptcy lawyer might exceed the amount in dispute.

As part of the effort to protect the public, I think the State Bar should provide the pro bono services of bankruptcy attorneys who will challenge a discharge attempted by an attorney who has been "disciplined" for the theft of client moneys. And the term "disciplined" needs definition since I have seen the Grievance process refuse to process additional claims against an attorney already disbarred (a Grievance claim has no statute of limitations and could be revived if the attorney attempted to be readmitted). And, theft of Trust moneys doesn't always get prosecuted since it's a lot easier for local police to deal with street crime than to learn about conversion, IOLTA accounts, etc.

I'd like to put this concept out there and see what your thoughts are. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert H. Roether", with a stylized, flowing script.

Robert H. Roether

RHR;cac