

ABI Commission to Study Chapter 11 Reform Advisory Committee Guidelines

The ABI Commission to Study Chapter 11 Reform (the “Commission”) has formed thirteen advisory committees to assist in its efforts to research and analyze thoroughly key issues underlying the chapter 11 process. Each advisory committee will work on one topic broadly defined by the Commission, with guidance and oversight from the Commission. In addition, as the process moves forward, advisory committees may need to collaborate with each other as many topics overlap in certain respects given the integrated nature of the Bankruptcy Code.

The Commission’s objective is to generate a holistic reform proposal grounded in the work of the advisory committees and consistent with its mission statement, which provides:

In light of the expansion of the use of secured credit, the growth of distressed-debt markets and other externalities that have affected the effectiveness of the current Bankruptcy Code, the Commission will study and propose reforms to Chapter 11 and related statutory provisions that will better balance the goals of effectuating the effective reorganization of business debtors—with the attendant preservation and expansion of jobs—and the maximization and realization of asset values for all creditors and stakeholders.

Each advisory committee will work closely with two or three members of the Commission to facilitate consistency and coordination throughout the process. These Commissioners (the “Commission Representatives”) will help each advisory committee organize and launch their study of the identified topic, as well as participate with the advisory committee throughout the process. Each advisory committee, working with their Commission Representatives, will determine the steps and approach they will follow to conduct an effective and efficient study of the committee’s topic. To assist in that endeavor, the Commission has developed the following guidelines for advisory committees.

Administrative Matters:

- *Meetings.* As soon as possible, advisory committees should hold their organizational meetings. Meetings may be accomplished in person, telephonically or both, including through online resources like *Go to Meeting*. Although the committee may decide that certain meetings are best accomplished in person, cost and scheduling may dictate alternative formats for most meetings. A summary of the resources and budget available for the advisory committees is attached at **Appendix A**.

- *Chair(s)*. Each advisory committee should identify a chair or co-chairs. Chairs generally will serve as the direct liaison between the Commission Representatives and the other committee members.
- *Reporter(s)*. Each advisory committee should identify a reporter or co-reporters. Reporters generally will maintain the minutes of each committee meeting, assist the Chair(s) and Commissioners with communications and the coordination of materials for the committee and take the lead on drafting the committee's report(s). Although the academic members of the committee may serve as reporter(s), the committee may ask other members to serve in that capacity and the committee may allocate these responsibilities among more than one member.
- *Participation*. *By agreeing to serve*, each advisory committee member commits to make their best effort to participate in meetings and make meaningful contributions to the discussion of the topic and the report(s) generated by the committee. Specific responsibilities for items such as researching, compiling and synthesizing materials for the committee may be allocated (including by assigning such tasks to research assistants, law clerks or associates working with committee members) as deemed most appropriate by the committee members and the Commissioner Representatives. Nevertheless, advisory committee members may not assign their committee positions or delegate their committee responsibilities.
- *Public Meetings*. The advisory committees may hold public meetings to solicit feedback and gather additional information on their study topics. Any public meetings must be pre-approved by the Commission and should be coordinated through the Commission and the ABI.

Substantive Matters:

- *Preliminary Assessments*. The Commission will provide each advisory committee with a Preliminary Assessment of the committee's topic. The Preliminary Assessment represents the Commission's initial consideration of the topic and the questions/issues that the Commission would like the committee to consider. *The Preliminary Assessment is intended to provoke thoughtful discussion and debate and is intended as a starting point for the committee's dialogue. The Preliminary Assessments do not reflect the Commission's perspective on any given topic and do not in any way pre-determine how an issue should be investigated or evaluated.* The Commission will not develop a position on any study topic, or any issue within a study topic, until it receives the committee's report(s) and has had an opportunity to fully vet and consider the topic or issue.

- *Focus of Committee Study.* The advisory committee should focus its initial work on the questions/issues identified in the Preliminary Assessment. However, the advisory committee may identify additional questions and issues for study. The advisory committee should discuss such additional questions/issues with the Commission Representatives and mutually determine the value of incorporating additional matters into the assessment and any study.
- *Primary Tasks.* Each advisory committee should thoroughly vet the questions/issues presented by the topic. This process likely will include reviewing existing materials collected in the Commission research database; researching and reviewing other case law and commentary on the topic; and discussing and debating the materials and issues/questions relating to the topics. At the core of these tasks is the basic question of whether the existing provisions of the Bankruptcy Code concerning the topic achieve the goal of an “effective reorganization” within the meaning of Commission’s Mission Statement (or, in the alternative, functioning well in the current environment) or need to be modified to better serve the objectives of an “effective reorganization.” If modification is advisable, possible alternatives should be studied and suggested, as detailed below.
- *Comprehensive and Objective Analysis.* The Commission has strived to ask people to serve on the advisory committees who represent the various perspectives on each of the topics. In considering the topics, the committees should consider all perspectives and what ultimately is best for an “effective reorganization.” If the committee is not able to form a consensus on any of the questions/issues presented, the committee’s report(s) should reflect the alternative positions and the pro and cons related to each.
- *Committee Reports.* The Commission Representatives will work with each advisory committee to develop one or more reports reflecting the advisory committee’s work on the study topic. These reports will, among other things: (i) identify the issues/questions studied; (ii) explain the committee’s approach to the study; (iii) review the primary case law and commentary considered by the committee; (iv) set forth the various approaches or responses to the issues/questions studied and the pros and cons related to each; (v) identify any consensus reached or disagreement encountered by the committee with respect to the issues/questions studied and the related policy considerations; and (vi) include a bibliography of all materials reviewed by the committee in reaching or trying to reach consensus on reform proposals. All work produced by the advisory committee must contain the following disclaimer: “*This report is a draft for discussion purposes only and does not represent the findings, conclusions or opinions of the American Bankruptcy Institute (“ABI”) or the ABI Commission to Study the Reform of Chapter 11.*”

- *Confidentiality.* The advisory committees' materials, deliberations and work product are work product of the Commission and are to remain confidential until otherwise determined by the Commission. By accepting an appointment to and serving on an advisory committee, each advisory committee member agrees to maintain the confidentiality of such materials, deliberations and work product. The Commission will determine which matters and proposals from each advisory committee report to include in the Commission's final report. Each advisory committee member agrees not to disclose matters relating to the advisory committee or the Commission project more generally before the Commission issues its final report and will not do so without the express written consent of the Commission's Co-Chairs authorizing any such disclosure. The Co-Chairs will endeavor to work with advisory committee members on any such request to the greatest extent possible. This paragraph is not intended to prevent or inhibit any person from authoring or publishing an article or participating in formal or informal discussions with respect to the subject matter of an advisory committee's topic or topics of study, as long as such articles do not purport to present any position taken by the advisory committee or the Commission. This provision shall not apply to any judge or federal employee or official (including any person employed by or affiliated with the Executive Office for U.S. Trustees) to the extent that compliance with this provision would violate any law, statute, regulation, order, protocol, rule or rule of ethics that requires that such person's work product, materials, communications or deliberations be subject to public disclosure or otherwise not subject to confidentiality or non-disclosure.
- *Anticipated Timing.* The Commission currently anticipates that this project will take two years to complete. Advisory committees may start and finish their studies at different points during this two-year period. The Commission recognizes that this project will be a fluid process and will work to keep all advisory committees informed of developments. Advisory committee members are encouraged to ask questions of, and provide any feedback to, the Commission Representatives working with their advisory committee or the Co-Chairs of the Commission at any time during the process.

APPENDIX A

Advisory Committee Resources and Budget

A. Conference Calls

Advisory committees should use the conference line information provided below. Scheduling of calls using this information should be coordinated through Sam Gerdano (sgerdano@abiworld.org).

Conference Line Information

Dial-in: 866-705-2554

Moderator Code: 5560469 (account no. 561)

Participant Code: 556046

B. Expenses Incurred in Connection with Commission and Advisory Committee Meetings (reimbursement provided for certain expenses incurred by judges, government employees and employees of nonprofit organizations)

The attached ABI Policy for Reimbursement of Expenses applies to all Commission and advisory committee meetings and related activities.



Policy for Reimbursement of Expenses

The ABI will reimburse **judges, government employees and employees of nonprofit organizations** for their actual out-of-pocket costs of attending ABI functions to which they are invited or that they are authorized to attend for the benefit of the ABI, subject to the following limitations:

Please note the guidelines below before you incur expenses. Always submit this form with receipts attached—within 30 days of the event for which expenses were incurred.

Transportation

- I. ABI will reimburse the actual cost of advance-purchase, nonrefundable, coach class, round-trip air transportation, not to exceed \$650. If transportation is by private auto, the ABI will reimburse at the prevailing government reimbursement mileage rate.
 - a. Upon application, the ABI Executive Director may authorize reimbursement exceeding \$650 if advance-purchase nonrefundable coach class airfare cannot be obtained for \$650.
 - b. If exigent circumstances require a change of flight schedule, the Executive Director is authorized to reimburse the penalty and additional charge resulting from the itinerary change. Additional expenses under this sub paragraph shall only be reimbursed if the additional expense was beyond the control of the party to be reimbursed.
- II. ABI will reimburse actual costs of transportation from home or office to airport (or parking at airport) and reasonable actual costs of transportation from airport to conference.

Lodging

- III. ABI will reimburse actual cost of hotel room and tax, not to exceed discounted rate quoted in the conference brochure plus tax (if the room is not charged to the master account.)
 - a. Lodging expenses will not be reimbursed for more than the minimum number of nights necessary to allow the person to attend all scheduled functions of the conference.
 - b. If despite reasonable diligence the conference hotel rate is not available, the Executive Director is authorized to reimburse a reasonable additional amount.

Meals

- IV. ABI will reimburse actual cost of meals and other incidentals, not to exceed \$85 per day.

Other Costs

- V. ABI will waive the conference registration fees.
- VI. In addition, ABI will include the attendee's spouse (or significant other), on a complimentary basis, in the meals and receptions that are ABI functions, not including optional tours, entertainment and events.

Copies of receipts are required for all expenses that exceed \$25.



AMERICAN
BANKRUPTCY
INSTITUTE

44 Canal Center Plaza
Suite 400
Alexandria, VA 22314

www.abi.org

Request for Reimbursement of Expenses: *(please print or type)*

Before submitting request, please refer to ABI's Policy for Reimbursement of Expense Policy

Personal Information:

Name (please print): _____ Date of Request: _____

Make check payable to (if other than above): _____

Full Address: _____ City/State/Zip: _____

Phone: () - _____ Fax: () - _____ Date(s) of travel: _____

Location of program/meeting: _____

Name of program/meeting: _____

Transportation:

Public Carrier (airline or other): _____ \$ _____

Use of personal automobile: _____ Miles at the applicable rate per mile = _____ \$ _____

*.51¢ for travel on / - / ; _____ \$ _____

Taxi, airport bus, shuttle, etc.: _____ \$ _____

Meals: \$85 per day for meals

Date	Breakfast	Lunch	Dinner	Daily Total	
					\$
					\$
					\$
					\$
					\$
					\$
Total for meals					\$

Total Reimbursement Requested \$ _____

I incurred the expenses described above for the purpose stated and I have attached receipts except in cases where the receipt has been lost. I certify that this request is correct to the best of my knowledge.

Requestor signature