

# Protocol for Public Matters

## **Protocol for The American College of Bankruptcy in Taking Positions in Matters Involving the Administration of the Bankruptcy System and in Other Matters of Public Interest**

October 2017

- A. In its capacity as a Section 501(c)(6) organization, the College can engage in advocacy activities that inform, educate and promote its interests. Section 501(c)(6) applies to organizations that promote the common business interest of an association of members. Thus, involvement in bankruptcy-related litigation such as through the filing of amicus briefs is consistent with the College's mission and tax status so long as the litigation is not undertaken for the purpose of assisting a particular member's individual interests.
- B. The College may also engage in legislative activities, such as commenting on pending legislation or engaging in direct lobbying of members, their staff, or the executive branch. There are limitations governing the deductibility of members' dues if those dues are used for certain forms of political activity. The College may not engage in direct expenditures advocating a vote for a political candidate or cause.
- C. The "Purposes" section of the College's Bylaws (ART. II, Sec. 2) states, among others, that the College may "fund and assist projects that enhance the highest quality of bankruptcy practice... and... participate in litigation and legislative matters in accordance with policies adopted by the Board."
- D. The College, while being mindful that its Fellows represent all sectors of the insolvency profession, may, from time to time, wish to comment on legislation, participate as an amicus curiae in cases, or take a public position where the College believes such action is consistent with the established purposes of the College.
- E. Accordingly, the Board has determined that the following procedure should be followed in the event the College is requested to comment on legislation, appear in a case as amicus curiae, or otherwise participate in a matter of public interest involving bankruptcy practice or procedure:

## Protocol

1. Any request (“Request”) for the College to comment on legislation, participate in a case as amicus curiae, or otherwise participate in a matter of public interest involving bankruptcy practice or procedure, shall be in writing addressed to the Chair and the President, setting forth in detail the matter on which the College is being requested to participate, the nature of the participation the College is being requested to undertake, and if known, other parties who may be participating in the matter. In any Request, the person making the Request shall disclose if that person or his/her firm or employer is involved in the matter that is the subject of the Request, whether for itself or for a client.
2. Upon receipt of the Request, the Chair and the President shall first determine whether the Request concerns a matter consistent with the mission of the College. If the Chair and the President jointly conclude that it does not, they shall so inform the person making the Request. If the Request does concern a matter consistent with the mission of the College, the Chair or President shall seek a determination from the General Counsel as to whether compliance with the Request will affect the College’s IRC section 501(c)(6) status and as to any conditions that should govern the College’s response to the Request.
3. If the General Counsel determines that the College’s tax status will not be adversely affected by complying with the Request, the Chair and the President shall review the Request with the Executive Committee. The Executive Committee shall determine whether to support or decline the Request as well as any conditions on such action, provided that if at least two members of the Executive Committee request the Board’s review of the Executive Committee’s determination, then the Executive Committee shall provide a report and recommendation to the Board concerning the Request.
4. In the event the Board is requested to review a report and recommendation of the Executive Committee, the Board, by majority vote, shall determine whether to support or decline the Request, as well as any conditions on such action.
5. Upon completion of the work product in connection with the Request and before its release in the College’s name, the Executive Committee shall, by majority vote, approve the release of the work product.
6. Any public statement should include language that the statement is made on behalf of the College and not on behalf of any Fellow or firm. Such language could read, for example, “The views expressed in this statement are those of the American College of Bankruptcy, on whose behalf this statement is issued, and do not necessarily reflect the personal views of any Fellow of the College, or of any firm with which one of more Fellows may be affiliated.”