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## Does Section 329 Grant Exclusive Jurisdiction to Bankruptcy Courts?

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### Introduction

Fee agreements between bankruptcy debtors and their counsel must often be settled in court. In which court those fee disputes can be heard is a question that is not yet settled. One court has looked to section 329 of the Bankruptcy Code for the answer. Section 329 states that if the compensation agreed upon by the debtor and attorney exceeds a reasonable value for the services rendered, “the court”<sup>1</sup> may cancel the agreement or return some of the payment.<sup>2</sup> *In re Piccinini*<sup>3</sup> is the first case to hold that the phrase “the court” in section 329 confers exclusive jurisdiction to bankruptcy courts over attorney-debtor fee agreements, but the lack of legislative intent and supportive case could cause this case to be disregarded by future courts deciding the same issue.

In *In re Piccinini*, the Bankruptcy Court for the Eastern District of Michigan rejected arguments that state courts had concurrent jurisdiction over bankruptcy cases.<sup>4</sup> Instead, the

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<sup>1</sup> See 11 U.S.C. § 329 (2006) (“If such compensation exceeds the reasonable value of any such services, the court may cancel any such agreement, or order the return of any such payment, to the extent excessive.”).

<sup>2</sup> See *id.*

<sup>3</sup> See *In re Piccinini*, 450 B.R. 677 (Bankr. E.D. Mich. 2011).

<sup>4</sup> See *id.* at 677.

*Piccinini* court held section 329 of the Bankruptcy Code grants exclusive jurisdiction to bankruptcy courts to resolve fee disputes between debtors and their counsel.<sup>5</sup> The court relied on the well-settled interpretation of section 523(c)(1) of the Bankruptcy Code and policy arguments supporting a similar interpretation of section 329.<sup>6</sup> *Piccinini* stayed the state suit filed by the debtor’s original counsel for collection of his fees until the bankruptcy court resolved the section 329 motion filed by the debtor.<sup>7</sup>

Part I of this memorandum discusses the statutory provisions relevant to the issue of jurisdiction and section 329. Part II of this memorandum analyzes the holding in *In re Piccinini*. Part III of this memorandum discusses arguments that litigants may make in future section 329 jurisdiction disputes. The memorandum concludes that *In re Piccinini* lacks support and that the issue of jurisdiction over section 329 fee disputes is still open for debate.

## **I. STATUTORY BACKGROUND**

To understand the reasoning of the *Piccinini* court and the arguments in support of and against its holding, one must have a basic knowledge of 28 U.S.C. § 1334 and sections 523(c)(1) and 329 of the Bankruptcy Code. While section 1334(a) is restrictive and grants exclusive jurisdiction for cases “under” title 11,<sup>8</sup> 28 U.S.C. § 1334(b) is broad and grants concurrent jurisdiction for civil cases “arising under title 11,” and “arising in or related to” title 11.<sup>9</sup> To fall within the narrow scope of 28 U.S.C. § 1334(a), a case must be “under” title 11 which means that it began by the filing of a bankruptcy petition and “which all of the proceedings which

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<sup>5</sup> *See id.* (holding bankruptcy court has exclusive jurisdiction).

<sup>6</sup> *See id.*

<sup>7</sup> *See id.*

<sup>8</sup> 28 U.S.C. § 1334(a) (2006).

<sup>9</sup> 28 U.S.C. § 1334(b) (2006).

follow the filing of a petition are predicated."<sup>10</sup> If a case does not fall with section 1334(a), than concurrent jurisdiction applies. While 28 U.S.C. § 1334(b) grants very broad concurrent jurisdiction, section 523(c)(1) has been interpreted to limit that jurisdiction to bankruptcy courts alone for issues of fraud under sections 523(a)(2), (4), and (6).<sup>11</sup> Furthermore, section 329 is now being interpreted parallel to section 523(c)(1) which only serves to further limit 28 U.S.C. § 1223(b)'s broad jurisdictional grant.<sup>12</sup>

Many courts have held that section 523(c)(1) of the Bankruptcy Code grants the bankruptcy courts exclusive power to except a debtor from discharge based on fraud or willful misconduct under sections 523(a)(2), (4), and (6).<sup>13</sup> For example, in *Spilman v. Harley*, the Sixth Circuit held that section 523(c) granted exclusive jurisdiction to the bankruptcy courts.<sup>14</sup> In *Spilman*, the appellee injured the appellant and then filed for bankruptcy, naming the appellant as a creditor.<sup>15</sup> Appellant argued that under section 523, the appellee's debt to appellant was nondischargeable.<sup>16</sup> Appellee argued that the appellant failed to demonstrate in state court that appellee had acted willfully or wantonly and, therefore, the debt to appellant should be discharged.<sup>17</sup> The appellate court remanded the case to determine whether the willful or wanton

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<sup>10</sup> *In re Hudson Oil Co.*, 68 B.R. 735, 737 (Bankr. D. Kan. 1986) (citing Collier on Bankruptcy para. 3.01, at 3-20 (15th ed. 1986)).

<sup>11</sup> *See Fid. Nat'l Ins. Co. v. Franklin*, 179 B.R. 913, 920 (Bankr. E.D. Cal. 1995) ("an exclusive jurisdiction exception to the general rule of concurrent jurisdiction per section 1334(b) is carved out by Bankruptcy Code § 523(c).").

<sup>12</sup> *See In re Piccinini*, 450 B.R. at 679 (holding section 329 grants bankruptcy courts exclusive jurisdiction).

<sup>13</sup> 11 U.S.C. § 523(c)(1); *See also Fid. Nat'l Ins. Co.*, 179 B.R. at 920.

<sup>14</sup> *See Spilman v. Harley*, 656 F.2d 224, 226 (6th Cir. 1981) (holding determinations under section 523(c) were to be made solely by the bankruptcy court).

<sup>15</sup> *See id.*

<sup>16</sup> *See id.*

<sup>17</sup> *See id.*

behavior of the appellee was even related to the state court decision.<sup>18</sup> The Sixth Circuit stated that “the power to determine dischargeability was granted to bankruptcy courts by the 1970 Amendments to the Bankruptcy Act. Congress intended to take the determinations governed by 11 U.S.C. § 523(c) away from state courts and grant exclusive jurisdiction in the bankruptcy courts.”<sup>19</sup>

Another example of a court holding that section 523(c) grants exclusive jurisdiction is the holding in *In re Moncur*. In *In re Moncur*,<sup>20</sup> the issue was whether the section 523(a) nondischargeability judgment in one bankruptcy proceeding remained enforceable when the debtor faced a subsequent bankruptcy.<sup>21</sup> The debtors argued that when the creditors failed to file a second nondischargeability action in the second bankruptcy, the debt lost its nondischargeable status.<sup>22</sup> The Bankruptcy Appellate Panel held that there was no need for a second nondischargeability action.<sup>23</sup> In its reasoning, the court stated “a bankruptcy court has subject-matter jurisdiction to resolve § 523 dischargeability questions in cases pending before it, and, for §§ 523(a)(2), (4), (6), and (15), such jurisdiction is exclusive.”<sup>24</sup> *Moncur* and *Spilman* conclude that section 523(c)(1) of the bankruptcy court constricts jurisdiction to the bankruptcy courts alone.

Section 329 of the Bankruptcy Code concerns the debtor’s transactions with attorneys and, therefore, interpretation of this section is key to the arguments supporting exclusive

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<sup>18</sup> *See id.*

<sup>19</sup> *See id.*

<sup>20</sup> *In re Moncur*, 328 B.R. 183 (B.A.P. 9th Cir. 2005).

<sup>21</sup> *See id.* at 186.

<sup>22</sup> *See id.* at 185.

<sup>23</sup> *See id.*

<sup>24</sup> *See id.* at 187.

jurisdiction of bankruptcy courts over attorney-debtor fee disputes.<sup>25</sup> Section 329(b) states that “the court” may cancel an excessive portion of agreed-upon attorney’s fees.<sup>26</sup> Courts have interpreted the purpose of section 329 as preventing “overreaching by the debtor’s attorney”<sup>27</sup> and providing “protection for creditors.”<sup>28</sup> There are policy arguments that extrapolate the stated purpose of section 329 to imply that bankruptcy courts should have exclusive jurisdiction,<sup>29</sup> but no prior decision, aside from *In re Piccinini*, has explicitly done so. The well-settled interpretation of the phrase “the court” in section 523(c)(1)<sup>30</sup> as reference to the bankruptcy court, as discussed above, led the *Piccinini* court to consider the reference to “the court” in section 329 of the Bankruptcy Code as a reference to the bankruptcy court as well.

## II. DISCUSSION OF IN RE PICCININI

### A. Case Background

The debtor Adorno F. Piccinini, represented by Edward F. Gudeman, filed for chapter 7 bankruptcy on July 24, 2008.<sup>31</sup> The debtor later moved to remove Gudeman as his attorney and the motion was granted on January 31, 2011.<sup>32</sup> The debtor then failed to pay Gudeman’s fees and

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<sup>25</sup> See 11 U.S.C. § 329 (2006) (“Any attorney representing a debtor in a case under this title, or in connection with such a case, whether or not such attorney applies for compensation under this title, shall file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation.”).

<sup>26</sup> See 11 U.S.C. § 329(a)–(b) (2006).

<sup>27</sup> *In re Campbell*, 259 B.R. 615, 625 (Bankr. N.D. Ohio 2001).

<sup>28</sup> *In re Smitty’s Truck Stop, Inc.*, 210 B.R. 844, 848 (B.A.P. 10th Cir. 1997).

<sup>29</sup> See *In re Piccinini*, 450 B.R. at 678–679 (arguing bankruptcy court’s expertise and interest in the issue justifies conferring exclusive jurisdiction on bankruptcy courts for matter falling with section 329 of the bankruptcy code).

<sup>30</sup> See *supra* text accompanying notes 14–29.

<sup>31</sup> See *In re Piccinini*, 450 B.R. at 677.

<sup>32</sup> See *id.*

Gudeman sued in state court to collect payment for services previously provided.<sup>33</sup> On March 22, 2011, the debtor's new attorney, Jay S. Kalish, filed a motion under section 329 of the Bankruptcy Code to determine the propriety of Gudeman's requested fees and to remove Gudeman's state court action to the bankruptcy court. The Bankruptcy Court for the Eastern District of Michigan held that it had exclusive jurisdiction over the debtor's section 329 claim and stayed, *sua sponte*, the state court matter initiated by Gudeman until the bankruptcy court determined the reasonableness of the fees requested by Gudeman.<sup>34</sup> The court noted that both sections 329 and 523 used the phrase "the court" and that courts have interpreted section 523(c) to refer exclusively to the bankruptcy court.<sup>35</sup> The court relied heavily on the policy reasons behind their interpretation of section 329<sup>36</sup> and concluded that the importance of the bankruptcy court's expertise and interest "in controlling their own proceedings and in regulating the behavior of professionals who seek to appear before them"<sup>37</sup> required exclusive jurisdiction of bankruptcy courts in the section 329 context. The lack of legislative history and the failure to address the potential inadequacies of concurrent jurisdiction makes the *Piccinini* decision less persuasive.

### **B. Analysis of *In re Piccinini***

There are two main issues with the *Piccinini* court's reasoning. First, the court relies on the purpose of section 329 as stated in case law, but the court fails to cite to appropriate legislative history. Second, one must question whether the purpose of section 329, as purported

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<sup>33</sup> *See id.*

<sup>34</sup> *See id.* at 679.

<sup>35</sup> *See id.* at 678.

<sup>36</sup> *See In re Piccinini*, 450 B.R. at 678 (arguing fear of overreaching of debtors' attorney and expertise of bankruptcy court on the issue require exclusive jurisdiction over issues under section 329); *see also In re Busy Beaver Bldg. Ctrs., Inc.*, 19 F.3d 833, 844 (3rd. Cir. 1994) (demonstrating purpose behind section 329 of the bankruptcy code).

<sup>37</sup> *See In re Piccinini*, 450 B.R. at 679 (citing *In re Elias*, 188 F.3d 1160, 1165 (9th Cir. 1999)).

by the *Piccinini* court, is still served even if concurrent jurisdiction was applied. The court’s failure to discuss the absence of legislative history and the potential inadequacies of concurrent jurisdiction in the section 329 context makes the *Piccinini* decision less persuasive.

The court relied on the purpose behind the enactment of section 329—to prevent overreaching by debtors’ attorneys<sup>38</sup>—to prove section 329 confers exclusive jurisdiction on the bankruptcy courts, but the court cites no legislative history that supports its restrictive interpretation of the phrase “the court” in section 329. Section 523(c) has ample legislative history, based mostly on the 1970 amendments to the Bankruptcy Code, which support courts’ interpretation of exclusive jurisdiction.<sup>39</sup> In contrast, the *Piccinini* court failed to cite any legislative history regarding exclusive jurisdiction in the context of section 329.<sup>40</sup> Instead, the *Piccinini* court uses policy arguments developed solely in case law to support its holding.

The court cites to *In re Elias* and *Edgewater Sun Spot, Inc. v. Pennington & Haben P.A.* to argue that section 329 confers exclusive jurisdiction to bankruptcy courts.<sup>41</sup> The court uses *In re Elias* to reason that exclusive jurisdiction is predicated on the “expertise and interest” of the bankruptcy court.<sup>42</sup> However, *Elias* did not so hold.<sup>43</sup> The *Elias* majority affirms the Bankruptcy Appellate Panel, which held that a post-dismissal motion to enforce the fee arrangement was “ancillary to the bankruptcy court’s core function of adjudicating the estate”.<sup>44</sup> Instead, *Piccinini* relied on Judge Fernandez’s dissent. Judge Fernandez reasons that the expertise and interest of the bankruptcy court implies that the bankruptcy court alone should make conclusions on fee

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<sup>38</sup> See *id.* at 678.

<sup>39</sup> See *supra* notes 11–16 and accompanying text.

<sup>40</sup> See generally *In re Piccinini*, 450 B.R. 677.

<sup>41</sup> See *id.* at 679.

<sup>42</sup> See *id.* at 679 (citing *In re Elias*, 188 F.3d 1160, 1165 (9th Cir. 1999)).

<sup>43</sup> See *Elias v. United States Trustee (In re Elias)*, 188 F.3d 1160, 1161–1162 (9th Cir. 1999).

<sup>44</sup> See *id.*



disputes.<sup>45</sup> While *Elias* was not controlling precedent and citing to Judge Fernandez’s dissent is not itself an error, the *Piccinini* court fails to acknowledge that they are not relying on the main opinion.<sup>46</sup> The *Piccinini* court’s reliance on Judge Fernandez’s dissent, without acknowledging that it was not the main opinion, presents a potential inadequacy of the *Piccinini* holding. The *Piccinini* court also cites to *Edgewater Sun Spot, Inc. v. Pennington & Haben P.A.*<sup>47</sup> to support its position that bankruptcy courts have exclusive jurisdiction over attorney-debtor fee disputes,<sup>48</sup> but the court there held that the bankruptcy court was not required to abstain from deciding the fee dispute relating to the debtor’s malpractice action in state court.<sup>49</sup> The bankruptcy court choosing not to abstain from deciding a fee issue and the concept of the bankruptcy court’s exclusive jurisdiction over fee disputes are two distinct ideas and one does not necessarily imply the other. Citing to *In re Edgewater Sun Spot, Inc.*, to support exclusive jurisdiction in section 329 may be misleading when viewed in this context.

The case law cited by the *Piccinini* court, as discussed above, tends to prove that there is a well-settled purpose behind the enactment of section 329 of the Bankruptcy Code, but the lingering question is whether exclusive jurisdiction of the bankruptcy courts is necessary to effectuate that purpose. The notion that state courts are unable to handle the issue of section 329 fee disputes seems unfounded when one examines the purpose and enactment of 28 U.S.C. § 1334. Because the legislative history of 28 U.S.C. § 1334 “was taken from § 1471(b) of the 1978

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<sup>45</sup> See *In re Elias*, 188 F.3d at 1163–1164 (Fernandez, J., dissenting).

<sup>46</sup> See *In re Piccinini*, 450 B.R. at 679.

<sup>47</sup> *Edgewater Sun Spot, Inc. v. Pennington & Haben P.A. (In re Edgewater Sun Spot, Inc.)*, 84 F.3d 438 (11th Cir. 1996).

<sup>48</sup> See *In re Piccinini*, 450 B.R. at 679 (citing *Edgewater Sun Spot, Inc. v. Pennington & Haben P.A. (In re Edgewater Sun Spot, Inc.)*, 183 B.R. 938, 943 (Bankr. N.D.Fla. 1995), *aff’d*, 84 F.3d 438 (11th Cir. 1999)).

<sup>49</sup> See *In re Edgewater Sun Spot, Inc.*, 183 B.R. at 942–944.

Act, the legislative history and judicial interpretations of that section are instructive.”<sup>50</sup> The legislative history of 28 U.S.C. § 1334 shows that § 1334(b) should be “be broadly construed so as to include any matter under which a claim is made pursuant to title 11.”<sup>51</sup> The grant of concurrent jurisdiction in 28 U.S.C. § 1334(b) means that the “broad” variety of cases that fall within the meaning of “arising under,” “arising in,” and “relating to” can be heard in both district and state courts. The fear of ‘overreaching’ attorneys and the issue of debtor-attorney fee disputes can easily fall within that broad grant, therefore, Congress intended those issues to be heard by both state and federal courts. To find otherwise, could open a floodgate to litigation regarding the competency of state courts whenever any bankruptcy issue is involved.

### **III. ARGUMENTS FOR AND AGAINST SECTION 329 JURISDICTION**

#### **A. Section 329 Grants Exclusive Jurisdiction to Bankruptcy Courts**

Despite criticisms of *Piccinini*'s interpretation of section 329, there are arguments that support the holding and its application in future fee disputes. One argument is that the importance of the relationship between the debtor and his or her counsel requires the expertise of the bankruptcy court. A second argument is that section 329 is the “act of Congress” required by section 1334(b) to dissolve concurrent jurisdiction. Although these arguments were not emphasized in *Piccinini*, they will help to further support the *Piccinini* holding.

First, one could argue that the importance of the relationship between the debtor and the debtor’s counsel is a fundamental aspect of the bankruptcy proceeding and requires the contemplation of the bankruptcy court. Accordingly, the fee agreements between debtors and

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<sup>50</sup> *In re Verrazano Holding Corp.*, 86 B.R. 755, 761 (Bankr. E.D. N.Y. 1988).

<sup>51</sup> *See id.*

their counsel are so inextricably interwoven with the bankruptcy proceedings that they require the bankruptcy court's exclusive jurisdiction.<sup>52</sup> Proponents argue the fee agreements are central to the bankruptcy proceeding because every dollar of the debtor's estate is crucial to the proceeding and payment to the rightful creditors.<sup>53</sup> As a result, the fee agreement could be within section 1334(a)'s narrow grant of exclusive jurisdiction to bankruptcy courts.

A second view is that section 329 is the "act of Congress" that section 1334(b) requires to dissolve concurrent jurisdiction, and, therefore, bankruptcy courts have exclusive jurisdiction over section 329 cases. The *Piccinini* decision can be used to further the argument that section 329's restrictive language, similar to that in section 523(c), demonstrates that the enactment of section 329 is an act of Congress meant to confer exclusive jurisdiction to the bankruptcy court. Drawing a parallel between section 523(c)'s grant of exclusive bankruptcy court jurisdiction over fraud issues<sup>54</sup> and the section 329's purpose to protect from overreaching could be very persuasive.<sup>55</sup> One could argue that these two sensitive issues require the exclusive jurisdiction of the bankruptcy court because the bankruptcy court has the sole purpose of protecting the debtor's estate.

#### **B. Section 329 Does Not Grant Exclusive Jurisdiction to Bankruptcy Courts**

It is important to emphasize the scope of 28 U.S.C. § 1334(b) when arguing that section 329 does not grant exclusive jurisdiction to bankruptcy courts for attorney-debtor fee disputes.

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<sup>52</sup> See *In re Campbell*, 259 B.R. 615, 626–27 (Bankr. N.D. Ohio 2001) (stating that compliance with section 329 is crucial to administration of estates involved in bankruptcy proceedings).

<sup>53</sup> See *Cohen & Thiros, P.C. v. Keen Enters. Inc.*, 44 B.R. 570, 573 (Bankr. N.D. Ind. 1984) (stating that "every dollar paid to the debtor's attorney correspondingly depletes the funds available to creditors.").

<sup>54</sup> See 11 U.S.C. § 523(c)(1) (2006) (referring to sections 523(a)(2), (4), and (6) all of which refer to fraud or misconduct).

<sup>55</sup> See *Zepecki v. Luther (In re Zepecki)*, 258 B.R. 719, 724 (B.A.P. 8th Cir. 2001) (stating that "the legislature's goal in enacting section 329 was to prevent overreaching by a debtor's attorney.").

First, it is important to note that the *Piccinini* court’s interpretation of section 329 may fail because the well-settled law that state courts share in concurrent jurisdiction with bankruptcy courts under 28 U.S.C. § 1334(b) contradicts exclusive jurisdiction in the section 329 context. Also, Congress’s intention to grant broad concurrent jurisdiction means that section 1334(b) does not exclude debtor-attorney fee disputes from state court jurisdiction. The *Piccinini* court’s failure to address these arguments is further support that these arguments would be helpful in persuading courts to find against section 329 exclusive jurisdiction.

28 U.S.C. § 1334(b) should be interpreted broadly to confer concurrent jurisdiction for all civil cases “arising under title 11, or arising in or related to cases under title 11.”<sup>56</sup> Therefore, section 329 falls within the scope of concurrent jurisdiction. Furthermore, it could be argued that section 329 is not an “act of congress” meant to confer exclusive jurisdiction. This is because section 329 has no legislative history suggesting it was meant to confer exclusive jurisdiction to bankruptcy courts.

The grant of concurrent jurisdiction in section 1334(b) demonstrates the legislature's intent to give state courts the power to hear civil cases that arise under title 11. Such a broad grant of concurrent jurisdiction should not be limited without ample support.<sup>57</sup> Section 523(c) grants exclusive jurisdiction for section 523(a)(2), (4), and (6), which deal with fraud. There is ample legislative history and case law to support the need for a limitation in those specific cases.<sup>58</sup> Similarly, there is ample legislative support and case law supporting exclusive jurisdiction of the bankruptcy courts for issues regarding relief from the automatic stay.<sup>59</sup> In

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<sup>56</sup> 28 U.S.C. § 1334 (2006); *see also supra* notes 8–13 and accompanying text.

<sup>57</sup> *See PRS v. Credit General Insurance Co., et al.*, 355 B.R. 77, 83 (N.D. Ill. 2005).

<sup>58</sup> *See* 11 U.S.C. § 523(c)(1) (2006) (referring to sections 523(a)(2), (4), and (6) all of which refer to fraud or misconduct).

<sup>59</sup> *See* *Constitution Bank v. Tubbs*, 68 F.3d 685 (3d Cir. 1995).

contrast, section 329 does not have the same legislative history or case law to support the limitation of section 1334(b)'s broad grant of concurrent jurisdiction, therefore, one should hesitate before reading section 329 to limit concurrent jurisdiction without further indication from the legislature.

### **Conclusion**

The decision set forth in *In re Piccinini* states that section 329 of the Bankruptcy Code confers exclusive jurisdiction over disputes between debtors and their counsel to the bankruptcy courts. Whether the *Piccinini* court's interpretation of section 329 will be relied on in future cases is unclear because the court failed to cite any relevant legislative history and failed to prove that concurrent jurisdiction would not serve the purpose of section 329. If the *Piccinini* decision does withstand scrutiny, debtor's attorneys will be forced to settle all section 329 fee dispute issues in bankruptcy courts only, despite the ease or convenience of state courts.

