

AGENDA

Bankruptcy Local Rules Committee Meeting April 29, 2014 10 A.M.

1. Chair Announcements.
2. Clerk's Office update. CM/ECF, et al. [Alec]

-Posting meeting summaries to court website

3. Continuations of Stay under §362(e) by Docket Entry. [Alec, Mike]

Issue: In light of the provision in §362(e) that the stay is terminated 30 days after motion is filed, what happens (or should happen) if the movant does not schedule a hearing within 30 days?

Background: When filing the motion in ECF, the movant is presented with a choice of whether to "waive" the "requirement" that a hearing be held within 30 days. At our December 2013 meeting, we discussed: What happens when a movant checks "no" and does not schedule a hearing within 30 days? And, what language should the clerk's office put on the docket to signify that movant consents to continuation of the stay in the event no hearing is held within 30 days? At our February 25, 2014 meeting, we discussed the following proposed language as an automatic docket entry on the CM/ECF system:

Notwithstanding 11 U.S.C. § 362(e), a party who schedules a hearing on a request for relief from the stay of any act against property of the estate imposed under 11 U.S.C. § 362(a) shall be deemed to have consented to a continuation of such stay pending the conclusion of, or as a result of, a final hearing and determination of such request under 11 U.S.C. § 362(d).

(For additional background, see summary of December 3, 2013 Meeting.)

For Discussion: Mike to recommend language for a local rule to address this.

4. 363(f) Motions Free and Clear. [Steve]

Issue: A new fee of \$176 has been imposed. What should a trustee do when he/she wishes to sell property free and clear and the estate has no funds to pay the filing fee? Will trustees be permitted to defer payment of the fee until proceeds of sale are received? The Rules currently do not contemplate this. Also, what would happen if the trustee fails to receive sale proceeds from which to pay the fee?

Should motions to defer payment of filing fee be added to the LBR 9013 list?

For Discussion:

Chief Judge Kornreich has reported back from his attendance at a meeting of the Bankruptcy Judges Advisory Group that the issue of deferring the 363(f) fee is being considered by the Judicial Conference. The BK Judges Advisory Group made a recommendation to the Conference that no deferral be adopted on a national basis, reasoning that trustees or other parties should be able to raise the sale fee from a prospective buyer or, if the value of the property doesn't support the fee, abandon it.

5. Closing Cases – [Steve Morrell]

Issue: The process for reviewing Trustee Final Reports and Trustee Distribution Reports is changing to streamline the closing of cases. The streamlined process raises questions as to the maintenance of wet signatures. Trustees will be responsible for keeping wet signatures on file.

For Discussion: Can the LRC do anything to assist as to this issue? Recommend a change to the CM/ECF rules?

6. Expansion of Motions for Enlargement without Hearing; LBR 9013-1(d)(1)
[Alec]

Issue: Many motions for enlargement currently require that a hearing be set. Examples include motions to extend time to pay filing fee installment, motions to extend time to file a motion to dismiss for abuse, motions to extend time to file a proof of claim, motions to extend time to object to exemption claim, and motions to extend time to file a nondischargeability complaint

For Discussion: Should LBR 9013-1(d)(1) be amended to expand the types of matters for which the court may grant enlargements of time without a hearing? See Exhibit A for possible revision.

7. Discovery Issues in Contested Matters: FRBP 9014 and Local Rule 9014-1
[Randy]

8. Other Matters

a. Issues for Future Agendas

9. Next Meeting: Schedule next meeting.

EXHIBIT A

RULE 9013-1 - MOTIONS PRACTICE

(a) . . .

(b) . . .

(c) . . .

(d) Scheduling Hearings.

(1) *Requirement that Hearing Date be Obtained.* Except as set forth below or otherwise ordered by the Court, a movant shall obtain a hearing date prior to filing a motion. A hearing date does not need to be set prior to filing the motions listed below, provided that the movant is not aware of any objection to the motion, that the motion states prominently in the upper right corner of the first page "Relief Requested Without a Hearing," and, with the exception of consent motions for relief from stay seeking immediate relief pursuant to Fed. R. Bankr. P. 4001(a)(3), that the proposed order states: "This Order shall become final in fourteen (14) days unless a party in interest sooner objects, in which case the matter shall be set for hearing and considered by the Court as if this Order had not been entered."

applications to employ professional persons that do not seek post facto or nunc pro tunc approval;

motions to extend time to file schedules, statements, tax returns, earnings statements and other documents required by 11 U.S.C. § 521 or Fed. R. Bankr. P. 1007 that have the consent of the U.S. Trustee or any trustee appointed in the case and any committee appointed in the case;

motions for relief from stay that have the consent of the debtor and any trustee and committee appointed in the case;

motions for enlargement of time; ~~pursuant to either Fed. R. Bankr. P. 4008(a) and D. Me. LBR 4008-1(a), or Fed. R. Bankr. P. 9006(b)(1);~~

motions to dismiss filed pursuant to 11 U.S.C. § 1208(b) or § 1307(b);

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