

AGENDA
Revised 6/8/16

Bankruptcy Local Rules Committee Meeting
June 14, 2016 10:00 A.M.

1. Approval of Minutes of Prior Meeting(s). [Mr. Clement]
2. Chair Announcements. [Mr. Clement]
3. Clerk's Office update. CM/ECF, et al. [Mr. Leddy]
4. Chapter 12 Rules; Consistency with Chapter 13 Rules. [Mr. Fessenden]

Issue: Should Local Rules be adopted to make Chapter 12 practice similar or identical in appropriate respects to Chapter 13 practice? If so, what changes should be made?

To Do: Mr. Fessenden to present revisions to LBR's 3015-1, 3015-2, 3015-3, and 3015-4 to add references to Chapter 12 as analogues to references to Chapter 13 where appropriate.

5. Chapter 13: Restrictions on Time to Re-File a Withdrawn Plan. [Mr. Fessenden and Ms. Beaudin]

Issue: Mr. Fessenden reports that the Chapter 13 practice sometimes gets "bogged down" because of serial withdrawals and re-filings of Chapter 13 plans. Plans are being withdrawn on the eve of confirmation, and not re-filed until an order to show cause is issued.

Mr. Fessenden proposed for discussion an amendment to LR 3015-3 to shorten time for re-filing a withdrawn plan from 28 days to 21 days. The proposed amendment would read as follows:

"(e) Withdrawal of Plan Noticed for Confirmation. If a plan is withdrawn by the debtor(s) after it has been noticed for hearing, the debtor(s) shall file a superseding plan within 21 days, unless the Court fixes a greater or lesser time."

To Do: Committee will consider proposed language set forth above, and other possible solutions.

6. Consider Requirement that Amended SOFA's Show Changes. [Mr. Clement, Ms. Bopp-Stark, and Mr. Creswell]

Issue: The filing of amended SOFA's without calling attention to the changes is burdensome to trustees and other practitioners. Should a person filing an amended SOFA be required to identify the changes? At the March 26 meeting, the subcommittee submitted proposed language. The Committee suggested further changes. Exhibit A attached hereto contains newly revised language.

To Do: Subcommittee to submit revised proposed language based on discussion at March 26, 2016 meeting.

7. Local Rule 9013-1(e): “Response Date” versus “Response Time.” [Ms. Lewis]

Issue: Some practitioners routinely set a response deadline to include not only the date, which is governed by the Local Rules, but also the time (e.g., “4:00 p.m.”), which is not. Should this practice be permitted? Is it authorized? May practitioners safely ignore the time deadline? Should the Local Rules speak to this issue?

Rule references: LBR 9013-1(e) (“Any party opposing entry of the order... Shall file a response to the motion no later than the response date set in the hearing notice.”); LBR 9013-1(i)(3) (“Responses to expedited motions shall be filed no later than the business day preceding the day of hearing.”); LBR 9013-1(j)(3) (“written responses [to emergency motions] are encouraged and may be filed up to the date that the hearing is convened.”);

8. Discovery in Contested Matters. [Judge Fagone, Mr. Morrell]

Issue: Is discovery permitted in contested matters without express authorization by the Court? Consider the interplay of the following:

- a. FRBP 9014(c) (in contested matters, Rule 7026 shall apply unless the court directs otherwise, provided, however, that subdivisions 26(a)(1) (mandatory disclosure), 26(a)(2) (disclosures regarding expert testimony) and 26(a)(3) (additional pre-trial disclosure), and 26(f) (mandatory meeting before scheduling conference/discovery plan) shall not apply in a contested matter unless the court directs otherwise));
- b. FRBP 7026 (describing scope, limits, timing, and sequence of discovery);
- c. LBR 9014-1(3) (“Unless otherwise ordered by the Court, Fed. R. Bankr. P. 7026 shall not apply to contested matters.”);
- d. LBR 9029-3 (“To the extent not modified or amended by these Local Rules, the following District Court Rules, as reasonably adapted to bankruptcy practice, shall apply in this court to the extent they are not inconsistent with the provisions of the Bankruptcy Code and the Fed. R. Bankr. P.: District Court Rule[] . . . 26(a);”
- e. District Court Rule 26(a) (describing discovery rules).

Attached as Exhibit B is a proposed revision to LBR 9014-1.

9. Should Consented-To Motions for Relief from Stay Require the Consent of Co-debtors Protected by the Stay Under §§1201 and 1301? [Roger, Alec]

Issue: Rule 4001-1(g) requires consent of the trustee and the debtor for a M/R/S to be filed as consensual, but does not require consent from codebtors. Should LBR 4001-1(g) require consent of codebtors protected by the stay?

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10. Global Revision to Local Rules. [Judge Fagone]

11. Other Matters
 - a. Issues for Future Agendas
 - b. Brown Bag Lunches: Bangor (9/8); Portland (9/28); Augusta (9/30)

12. Next Meeting: Schedule next meeting.

Exhibit A

6/6/16

Rule 1009 – 1 – AMENDMENTS TO LISTS AND SCHEDULES

(b) Amendments. Any document filed to effect an amendment to a previously-filed document, including petitions, lists, schedules, and statements shall clearly state in bold print that it is an amendment, and shall clearly identify all changes. Acceptable techniques for identifying changes may include blacklining, bold type, and written summaries of changes. Any amendment adding creditors shall be accompanied by a supplemental matrix containing only the names and addresses of the additional creditors.

Exhibit B

RULE 9014-1 - CONTESTED MATTERS

(a) General Provisions.

- (1) *Rule 9013 Governs Procedure.* In any contested matter, motion practice shall be governed by D. Me. LBR 9013-1.
- (2) *Service and Service Certificate.* Unless another manner of service is ordered by the Court, the movant shall serve the motion by mail in the manner provided by Fed. R. Bankr. P. 7004. No summons is required. The movant shall file with the Clerk a Certificate of Service, attached to the motion, which complies with D. Me. LBR 9042-1.
- (3) *Discovery ~~Requirements.~~ Unless otherwise ordered by the Court, discovery in a contested matter may not commence prior to the first hearing on the contested matter. Unless otherwise ordered by the Court, Fed. R. Bankr. P. 7026 shall not apply to contested matters. At the first hearing on a contested matter, the parties should be prepared to address the issues and topics identified in Fed. R. Civ. P. 26(f)(3)(B)-(F).*
- (4) *Evidentiary Hearings.* Prior to commencement of an evidentiary hearing on a contested matter, all counsel shall certify, before the presentation of evidence (1) that good faith settlement discussions have been held, or why they were not held, and (2) that all exhibits (except those to be used solely for impeachment) have been pre-marked and exchanged. In addition, counsel shall be prepared to stipulate to uncontested facts and to inform the Court of the anticipated length of the hearing.

- (5) *Removal of Unopposed Routine Matters from Hearing List.* The day prior to a hearing date, routine motions (e.g., motions for relief from stay, motions to sell free and clear of liens, objections to claims) to which no written objections or responses have been filed may, in the Court's discretion, be taken off the hearing list for the following day, unless a party has specifically requested a hearing (e.g. in order to make a statement on the record). Non-routine motions (e.g., cash collateral or where the respondents are pro se debtors) shall be heard unless grounds demonstrating cause why the matter need not be heard are set forth. Parties-in-interest may call chambers the day before a scheduled hearing to ascertain whether a particular motion has or has not been taken off the hearing list.

(b) Pleading Special Matters.

- (1) *Applicability of Rule.* This subsection applies to contested matters in which any of the following types of relief is sought:
 - (i) abandonment;
 - (ii) relief from stay;
 - (iii) avoidance of a lien or liens; or
 - (iv) a sale free and clear of lien or liens.

- (2) *Content.* Unless all parties formally consent to the requested relief, the following, as applicable, shall be stated with particularity:
 - (i) the identity and location of the property which is the subject of the motion;
 - (ii) the market value of the property which is the subject of the motion;
 - (iii) the extent of any claimed exemption(s) in the property which is the subject of the motion;
 - (iv) the identity and address of the holder of each and every lien on the property which is the subject of the motion;
 - (v) the type, priority, face amount and the best available information as to the amount balance and perfection of each and every lien on the property which is the subject of the motion; and
 - (vi) the specific sections of the Bankruptcy Code, and the specific procedural rules, germane to determination of the motion.