

## AGENDA

### Bankruptcy Local Rules Committee Meeting October 11, 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. 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 A is a proposed revision to LBR 9014-1 that was discussed and agreed upon at the June 2016 meeting. Please note the option—“ordered by the court,” or “authorized by the court”?

5. 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 motion for relief from stay to be filed as consensual, but does not require consent from codebtors. If a M/R/S is consensual, then no hearing is required. See, LBR 9013-1(d). But, a

consented to M/R/S that does not include the consent of a codebtor should not lead to the relief that the movant truly seeks, which is to be free to foreclose on its collateral. Should LBR 4001-1(g) be amended to require consent of codebtors protected by the stay?

Currently, LBR 9013-1(d) does not have provision for relief without a hearing even when the codebtor consents. Should a parallel change be made to LBR 9013-1(d), dealing with exceptions to the hearing date requirement? If so, consider the following: “Motions for relief from the stay that have the consent of the debtor and of any trustee and committee appointed in the case, as well as of any non-filing codebtor if relief from a codebtor stay is sought.”

Note: The Committee discussed this at our June 14 meeting and concluded nothing needed to be changed. Based on further analysis by Judge Fagone and Mr. Clement following the meeting, we have added this item back to the Agenda for further discussion.

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

7. Other Matters.

a. Advice to USDC Local Rules Advisory Committee regarding New Disclosure Rules for Appeals to District Court.

The LRAC is reviewing a request from the Court to draft a disclosure rule akin to LR 7.1 which would apply to bankruptcy appeals from the Bankruptcy Court to the District Court. The LRAC has drafted a proposed new Rule 83.6(d) which is patterned after LR 7.1 and Local Rule 8014-1(a)(3) of the First Circuit Bankruptcy Appellate Panel. The LRAC has asked for thoughts or comments from our Committee regarding the proposed rule. Judge Fagone and Mr. Clement have reviewed the LRAC’s draft Rule and provided comments.

b. Issues for Future Agendas

8. Next Meeting: Schedule next meeting

Exhibit A

**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, 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 need for discovery and, if applicable, the issues and topics identified in Fed. R. Civ. P. 26(f)(3)(B)-(F). Discovery in a contested matter may not commence until ordered [authorized?] by the Court.

(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.

