

**United States Bankruptcy Court for the District of Maine
Local Rules Committee**

Meeting Minutes – January 12, 2016, 10:00 A.M.

A regular meeting of the Local Rules Committee for the United States Bankruptcy Court for the District of Maine was held at the Bankruptcy Court in Portland, Maine on January 12, 2016. Members of the Committee in attendance were Judge Michael A. Fagone, Roger A. Clement, Jr., Esq. (Chair), Darcie P. L. Beaudin, Esq., Steven E. Cope, Esq., Randy Creswell, Esq., Allison A. Economy, Esq., Alec Leddy, Esq. (Clerk of Court), Jessica A. Lewis, Esq., Stephen G. Morrell, Esq. (Assistant U.S. Trustee), and Andrea Bopp Stark, Esq.

Peter C. Fessenden, Esq. (Standing Chapter 13 Trustee) and Richard A. Silver, Esq. were absent.

1. Approval of Minutes. Minutes of the November 12, 2015 meeting were approved.
2. Chair Announcements. Mr. Clement welcomed two new committee members: Jessica Lewis and Allison Economy.
3. Clerk's Office Update.

Mr. Leddy reminded the committee that new bankruptcy forms went into effect on December 1 and the grace period for using the old forms has now expired. Mr. Leddy also reported that the planning committee for the District of Maine judicial conference will meet this week and will be planning to include a bankruptcy break-out session at the conference. Mr. Leddy explained that the Judicial Conference has a standing subcommittee with authority to set how court units are funded. The subcommittee is working on new funding formulas for the District. Budget pressure remains at the national level.

4. Revisions to Local Rules to Conform with New Official Forms and Amendments to the Fed. R. Civ. P.

Mr. Leddy and Judge Fagone conducted an initial review of the Local Rules to determine whether references to form numbers in the Local Rules should be revised to reflect the changes in the Official Forms. They created a chart outlining the Local Rules that reference the Official Forms and the new form numbers that would need to be inserted. The subcommittee discussed removing references to particular forms and instead referring readers to "the appropriate Official Form." The benefit is that the Local Rules would not need to be revised each time the Official Form numbers are changed. Judge Fagone and Mr. Leddy will prepare a redlined version of the applicable Local Rules for review by the subcommittee at the next meeting. The issue of whether the changes to the Federal Rules of Bankruptcy Procedure will require substantive changes to the Local Rules was left for a later date.

This item will remain on the agenda.

5. Administrative Procedures Relating to Electronic Filing and Signature Requirements.

This item remained on the Agenda from the previous meeting.

Issue: This item grew out of Mr. Morrell's concerns about the applicability of the "wet signature" retention requirement to recent streamlined procedures for reviewing Trustee File Reports and Trustee Distribution Reports. Although the concerns of the U.S. Trustee's Office have been resolved, Messrs. Morrell and Cope were tasked with addressing the following issues:

- a. Analyze the current Administrative Procedures (described below) and make a recommendation as to whether changes should be made to the language of the Administrative Procedures;
- b. Analyze whether the provisions in the Administrative Procedures should be converted from a standing order to a Local Rule; and
- c. Analyze whether the Local Rules should require verified digital signatures, to replace the current practice of indicating digital signatures by using "/s/". See Administrative Procedures (defined below) at II.D. See LBR 4001-1(g) (requiring signatures for consented to motions for relief from stay);
- d. Confer with Mr. Leddy and report as to whether the next generation CM/ECF program will address the issue of verified signatures.

See, Administrative Procedures for Filing, Signing Maintaining, and Verifying Pleadings and Other Documents in the Electronic Case Filing (ECF) System (the "Administrative Procedures"), which was adopted pursuant to the Standing Order Regarding Administrative Procedures for Electronically Filed Cases, dated August 12, 2002.

Judge Fagone reported that he is of the view that this issue does not need further review by the committee. The procedure that created the Administrative Procedures should be used to amend or to seek changes to address any inconsistencies in the Administrative Procedures. Mr. Cope agreed, but suggested that there should be more prominent references to the Administrative Procedures in the Local Rules and on the Bankruptcy Court's website. Local Rule 5005-4, which addresses electronic filing, already references the Administrative Procedures and could be revised to make the reference to the Administrative Procedures more prominent. Before the next meeting, Judge Fagone will circulate proposed language to add to Local Rule 5005-4. Mr. Leddy will add more prominent references to the Administrative Procedures on the website.

This item will remain on the agenda.

6. Certificates of Service in the Age of Electronic Filing and Noticing.

This item remained on the Agenda from the previous meeting.

Issues: Should the parties be required to file a certificate of service as to service that is provided through the NEF (Notice of Electronic Filing) system or through the Bankruptcy

Noticing Center? If so, what form should be certificate of service take? How can an attorney make any certifications with respect to notice that is given through these electronic means that are not under the control of the attorney?

Judge Fagone drafted language to modify LBR 9042-1, but is not convinced that a problem exists. The Administrative Procedures contains a form certificate of service, as do the Official Forms. The committee, however, questioned the accuracy of the second sentence on the forms. After discussion of the issue, it was decided that the subcommittee will continue to review the issue and make any recommendation at the next meeting.

This item will remain on the agenda.

7. LBR 9013-1(d)(5) Revisited.

This item remained on the Agenda from the previous meeting.

Mr. Creswell raised the following issue: Does the existing language (which was drafted within the last two years), provide effective guidance as to requirements for setting hearing dates and deadlines for responsive pleadings?

Judge Fagone and Mr. Creswell circulated to the committee a proposal to amend Local Rule 9013-1(d)(5) to eliminate ambiguity, subject to review and approval by Chief Judge Carey (who has not yet reviewed the proposal). After discussion of this issue, it was decided that the committee should come to the next meeting with comments and questions regarding the proposed language.

This item will remain on the agenda.

8. Chapter 12 Rules.

Issue: Should the Local Rules be amended to make Chapter 12 Practice similar or identical in appropriate respects to Chapter 13 practice?

Due to Mr. Fessenden's absence, this item was tabled. Mr. Fessenden will circulate proposed revisions prior to or at our next meeting.

This item will remain on the agenda.

9. Restrictions on Time to Re-File a Withdrawn Plan

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 previously 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.*”

Ms. Beaudin is analyzing whether any prohibition exists on establishing a deadline for plan confirmation in Chapter 13 cases.

Due to Mr. Fessenden’s absence, this item was tabled

This item will remain on the agenda.

10. Consider Requirement that Amended SOFA’s Show Changes. [Mr. Clement]

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?

Prior to the meeting, Mr. Clement circulated samples of Local Rules from other jurisdictions, and a proposed revision to Local Rule 1009-1(b), as follows (proposed language is in italics):

(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 by use of blacklining, bold type, or similar technique, combined with such explanations and legends as are appropriate to clearly convey all changes.* Any amendment adding creditors shall be accompanied by a supplemental matrix containing only the names and addresses of the additional creditors.

The committee agreed conceptually that any changes to the Petition, Schedules, or the SOFA need to be conspicuous. The committee discussed ways in which changes could be made more conspicuous without placing an additional burden on debtor’s counsel. A subcommittee consisting of Mr. Clement, Mr. Creswell, and Ms. Bopp Stark was created to review this issue and report back to the committee at the next meeting.

11. Next Meeting.

The next meeting will be on Tuesday, March 29, 2016, at 10:00 am at the Bankruptcy Court in Portland and the teleconference room at the Court in Bangor.

Note: any materials to be discussed at the March 29 meeting should be circulated to the entire Committee no later than Tuesday, March 22, 2016.