

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

**Meeting Minutes – January 17, 2017, 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 on January 17, 2017.

Members of the Committee in attendance were Judge Michael A. Fagone, Randy Creswell, Esq. (Chair), Darcie P.L. Beaudin, Esq., Andrea Bopp Stark, Esq., Steven E. Cope, Esq., Allison A. Economy, Esq., Peter C. Fessenden, Esq. (Standing Chapter 13 Trustee), Alec Leddy, Esq. (Clerk of Court), James F. Molleur, Esq., Stephen G. Morrell, Esq. (Assistant U.S. Trustee), and F. Bruce Sleeper, Esq. Ciera Dye, Esq. also attended. Nathaniel R. Hull, Esq. was absent.

1. Approval of Minutes of Prior Meeting. Minutes of the December 6, 2016 meeting, as revised, were approved.

2. Chair Announcements. Mr. Creswell reported that he has reached out to the Chair of the U.S. District Court Local Rules Committee, Leonard W. Langer, Esq., to confirm whether the U.S. District Court Local Rules Committee would like or require Mr. Creswell to attend its meetings as a liaison to this Committee as Mr. Clement, former Chair of this Committee, has done in the past.

3. Clerk's Office/Pro Hac Vice Admissions Update. Mr. Leddy reported that the U.S. District Court has three proposed Bankruptcy Local Rules amendments that are awaiting their approval. Mr. Leddy confirmed that the Clerk's office announces on the Bankruptcy Court website any changes to the Bankruptcy Local Rules as they are approved and automatically updates the Bankruptcy Local Rules found on the Bankruptcy Court's website.

Mr. Leddy expressed concern about confusion that has arisen over the cancellation of § 341 meetings due to inclement weather, particularly among non-debtor parties. Mr. Morrell will consider the issue and report back to the Committee at the next meeting if the Committee can be of assistance on the issue.

Mr. Leddy informed the Committee that the U.S. District Court is reviewing the issue of *pro hac vice* admissions to its Court. If the District Court implements a Local Rule on the topic, any such Rule will automatically be applicable to practice in the Bankruptcy Court under the Bankruptcy Court's Local Rules.

4. Should Consented-To Motions for Relief from Stay Require the Consent of Codebtors if They are Covered by Co-Debtor Stay Under §§ 1201 or 1301 of the Code?

**Issue:** Local Rules 4001-1(g) and 9013-1(d)(1) require the consent of the Trustee and the Debtor for a motion for relief from stay to be filed as consensual, but they do not require consent from Codebtors covered by §§ 1201 or 1301 of the Code. If a motion for relief from stay is consensual, then no hearing is required. *See* Local Rule 9013-1(d)(1). But, a consented to motion for relief that does not include the consent of a codebtor, but which does seek relief from

the codebtor stay, may not lead to the relief that the movant truly seeks, which is to be free to foreclose on its collateral. Should Local Rules 4001-1(g) and 9013-1(d)(1) be amended to require consent of codebtors protected by the stay?

The Committee previously determined that the issue is whether a party seeking relief from the automatic stay must obtain the consent of the codebtor in order for the motion to be granted without a hearing. Currently, Local Rule 9013-1(d) does not have provision for relief without a hearing even when the codebtor consents. Should a change be made to Local Rule 9013-1(d), to deal with exceptions to the hearing date requirement when the codebtor consents? After further discussion of the issue, Mr. Sleeper agreed to recirculate proposed revisions to Local Rule 9013-1(d) for the Committee's consideration prior to the next meeting.

This item will remain on the agenda.

5. Revised Federal Rules of Bankruptcy Procedure and *Stern v. Marshall* issues regarding Local Bankruptcy Rules.

Judge Fagone previously reported on the new Federal Rules of Bankruptcy Procedure that became effective on December 1, 2016. These new rules fall into the following categories: (a) rules dealing with *Stern v. Marshall* issues; (b) rules dealing with cross-border issues; (c) revisions to Federal Rule of Bankruptcy Procedure 3002.1 (relating to Chapter 13 plan payments on account of claims secured by the debtor's principal residence); and (d) 9006 (relating to time computation when service is effectuated electronically). The Committee previously concluded that there is no need to address items (b), (c), and (d) above and Mr. Creswell previously agreed to look into item (a) and report back to the Committee at this meeting.

Judge Fagone explained that Federal Rules of Bankruptcy Procedure 7008 and 7012 have changed as a result of the *Stern v. Marshall* decision and subsequent decisions. As a result of these decisions, there has been a shift in the Federal Rules of Bankruptcy Procedure from a focus on whether a matter is core or non-core to whether the parties consent to the entry of judgment for constitutional concerns. In light of this change in focus in the revised Federal Rules of Bankruptcy Procedure 7008 and 7012, Local Rules 7008-1 and 7012-1 may no longer be necessary. The Committee is tasked with reviewing Local Rules 7008-1 and 7012-1 to determine whether any portion of these Local Rules should survive the changes in the Federal Rules of Bankruptcy Procedure.

This item will remain on the agenda.

6. Uniform/National Chapter 13 Plan Adoption/Revision – Formation of Working Group and Review.

Judge Fagone stated that Federal Rules of Bankruptcy Procedure 3015 and 3015.1 are likely to be amended to require Chapter 13 plans that conform to a federal form. These new rules will likely take effect December 1, 2017. Each District will have the ability to opt out, provided that a defined process is followed. The opt-out process will require an official comment period. Accordingly, the Committee previously agreed to form a subcommittee to analyze the "national" Chapter 13 plan, solicit input from members of the bar and other

appropriate persons, and determine whether we would recommend pursuing a process for opting out of the national plan.

Judge Fagone confirmed that a subcommittee has been formed to analyze this issue, with the following individuals agreeing to participate in this subcommittee: Judge Fagone, Mr. Fessenden, Mr. Will Sandstead, Mr. Leddy, Mr. Molleur, Mr. Sleeper, Mr. Richard Goldman, Ms. Economy, and Ms. Beaudin. Judge Fagone is assembling materials to circulate to the subcommittee and will convene the subcommittee in the upcoming weeks.

This item will remain on the agenda.

7. Issues related to and dealing with severed Chapter 13 Plans.

Mr. Sleeper previously raised the issue of how to deal with severed Chapter 13 Plans. These arise in Chapter 13 cases that are filed jointly, but then severed into two cases. Mr. Sleeper circulated a memorandum to the Committee prior to the meeting, outlining many of the issues that arise when joint Chapter 13 cases are severed. The issues differ depending on whether the Chapter 13 Plan was confirmed and whether claims were allowed prior to the severance of the cases. The Committee discussed whether the Local Rules could be amended to set a deadline for both parties to file an amended Chapter 13 Plan following the severance or the case may be subject to dismissal.

Judge Fagone expressed skepticism about a rule-based answer to the issues arising in severed cases. The fundamental question is whether the Court has the authority to sever cases. If the Local Rules do attempt to address the issue, he suggested that the Local Rules should outline what issues a motion to sever must address. Judge Fagone volunteered to ask colleagues about how other jurisdictions are dealing with this complexity.

This item will remain on the agenda.

8. Local Rule 9019-2 and ADR Process – Review of ADR Process and potential revisions to current practice.

The Committee was asked to evaluate whether to enhance the Local Rules relating to Alternative Dispute Resolution. Judge Fagone previously informed the Committee that he is firmly opposed to mandatory mediation in any context. In light of Judge Fagone's position, the Committee continued its discussion regarding whether the Local Rules could impose a structure to use in the event the parties voluntarily agree to mediation.

Prior to this meeting, Mr. Cope located and circulated the ABI's model ADR Rules and the ADR Rules used in the District of Delaware. The Committee discussed whether additional structure is needed when the parties agree to mediation or whether the process works as it is currently formulated.

The Committee agreed that it needed more time to review the circulated ABI model ADR Rules and the District of Delaware ADR Rules before further discussion can ensue. This item will remain on the agenda.

9. Motions to Expedite and Hearing Expedition Process. Mr. Creswell previously raised the issue of whether there is a way to improve the process for filing and providing notice of expedited motions as such process is currently outlined in the Local Rules. Mr. Leddy explained that, under the prior procedures, parties were required to contact the Clerk's office to obtain a date for any expedited hearing. The current process was promulgated, in part, in response to a concern that the prior process was not fair to all parties. Because he raised the issue, Mr. Creswell agreed to review how other jurisdictions address this issue and report back to the Committee at the next meeting.

This item will remain on the agenda.

10. Other Matters/Issues for future Agendas. None.

11. Next Meeting. The next meeting will be on Tuesday, March 28, 2017, at 10:00 am at the Bankruptcy Court in Portland and the teleconference room at the Court in Bangor.