

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

Meeting Minutes – February 25, 2014, 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 February 25, 2014. Members of the Committee in attendance were Chief Judge Louis H. Kornreich, Judge Peter G. Cary, Alec Leddy, Clerk of Court, Randy J. Creswell, Esq., Michael A. Fagone, Esq., Stephen G. Morrell, Assistant U.S. Trustee, Peter C. Fessenden, Esq., Standing Chapter 13 Trustee, Steven G. Cope, Esq., Perry O'Brian, Esq., Andrea Bopp Stark, Esq., and Darcie P.L. Beaudin, Esq.

Member Richard A. Silver, Esq. was absent.

I. Minutes of December 13, 2013 Meeting were Approved

II. Chair Announcements

- a. New Members Cope, O'Brian, Stark, and Beaudin were welcomed to the Committee.
- b. Meeting Minutes will now be published on the Bankruptcy Court's website, beginning with the approved February 25, 2014, Minutes.

III. Clerk's Office Report

- a. The Bankruptcy Court will be holding brown-bag lunches with Judges Kornreich and Cary on April 10 (Bangor), April 30 (Portland), and May 14 (Augusta).
- b. The Bankruptcy Court will be updating its external website to conform to a national template being used by federal courts in other jurisdictions. It is expected that the updating process will be completed by year-end.
- c. Bankruptcy filings in January 2014 were higher than the month before, which stopped a monthly downward filing trend from the previous two years.
- d. Next Generation of CM/ECF is approaching. Training will be available once the new version is implemented. Timeframe for full implementation is still as yet unknown, but will likely be sometime in mid- to late 2015.

IV. Local Rule Amendments/Updates/Revisions

a. Local Rule 4001-1 – 11 U.S.C. § 362(e)

At present, in the event that a movant self-schedules a preliminary hearing on a motion for relief from stay more than 30 days from the filing of the motion, the CM/ECF process requests that the movant “waive” the requirement that the preliminary hearing be held within 30 days of the filing of the motion, in an attempt to satisfy the requirements of § 363(e). Following a review of the language of § 362(e), the Committee agreed that the more proper procedure for achieving compliance with § 362(e) in such circumstances is to have the movant “consent” to the continuation of the stay pursuant to § 362(a) (as opposed to the waiver of any rights under § 362) pending the commencement of the preliminary hearing on the motion, if such preliminary hearing is scheduled more than 30 days after the filing of the motion seeking relief.

The Committee also agreed that a Local Rule addressing the issue, rather than a CM/ECF entry or notation, was likely the more proper manner in which to address the matter. Mr. Fagone was asked to prepare for the Committee’s consideration a draft Local Rule addressing and resolving the issue.

b. 11 U.S.C. § 363(f) – Motions to Sell Free and Clear – Filing Fee

The Committee discussed the issue of the new \$176 filing fee for filing a § 363(f) motion. Namely, what trustees are to do in the event there are no estate funds to pay the fee when filing the motion. The Committee noted and discussed the long history of this specific issue at the national level, the fact that it had undergone extensive analysis on its potential impact on the ability to administer estates and generate funds, and the fact that it appears that there is no favored national solution to the issue.

A Committee Member observed that Local Rule 9013-1(d) contemplates the deferral of filing fees and that may serve to assist in the resolution of this issue in any particular case. The Committee expressed the sentiment that the practical resolution of this issue, at this time, will likely be addressed by the thoughtful, inventive, and creative members of the bankruptcy bar on a case-by-case basis.

c. Closing Cases – Streamlining Process

Mr. Morrell reported on his work from prior Meetings concerning the closure of bankruptcy cases and the ways of potentially streamlining the closure process. Mr. Morrell reported that while some progress on the matter was being made in this Region, it was still a work in progress. The UST Program continues to seek resolution to a number of technical and logistical challenges in its quest to streamline the case closing process.

The Committee generally expressed the view that this issue may be beyond the scope of the Committee’s charge, but it concluded that the matter should stay on the agenda for the next meeting for further discussion as necessary.

V. Other/New Matters

a. Re-establishment of Bankruptcy Section of Maine State Bar Association

The Bankruptcy Section of the Maine State Bar Association has been dormant in its activity for some time, and there was a discussion as to the potential utility to the bankruptcy bar in re-establishing the Section. No specific direction or conclusions concerning the re-establishment of the Bankruptcy Section were reached by the Committee, and some expressed reluctance to re-instate the Section simply for the sake of doing so if there was little or no consensus that the endeavor would be of true benefit to the bankruptcy bar.

b. Brown Bag Lunch Topics

Topics for the upcoming brown-bag lunches were discussed. It was noted that the issues presently being considered by the Committee would likely be raised and discussed at those events, so that members of the bankruptcy bar could give their opinions and insights on the matters.

c. Discovery in Contested Matters

A Committee Member noted that some members of the bankruptcy bar had inquired of the Committee whether, in its view, all the discovery processes and methods available to litigants in Adversary Proceedings were also available to parties in contested matters in light of the plain language of Federal Rule of Bankruptcy Procedure 7026 and 9014 and Local Rule 9014-1(a). The Committee noted some potential ambiguities, if not actual conflicts, in the language of the applicable federal and local rules, and it was resolved that the Committee would examine the issue further.

VI. Adjournment

Meeting adjourned at 11:45 a.m.

VII. Next Meeting

April 29, 2014 at 10:00 a.m. – Bankruptcy Court, Portland