

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

Meeting Minutes – March 29, 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 March 29, 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., Peter C. Fessenden, Esq. (Standing Chapter 13 Trustee), Jessica A. Lewis, Esq., Stephen G. Morrell, Esq. (Assistant U.S. Trustee), and Andrea Bopp Stark, Esq.

Randy Creswell, Esq., Allison A. Economy, Esq., Alec Leddy, Esq. (Clerk of Court), Perry O'Brian, Esq., and Richard A. Silver, Esq. were absent.

1. Approval of Minutes. Minutes of the January 12, 2016 meeting were approved.
2. Chair Announcements. Revisions to the Local Rules to conform with the new Official Forms and the amendments to the Federal Rules of Civil Procedure are complete and posted on the website.
3. Clerk's Office Update.

Judge Fagone reports that the Clerk's office continues to provide good service despite current budget constraints. Judge Fagone also reported that the planning for this year's District of Maine judicial conference is underway. The conference is scheduled to take place on October 27 and 28 at the Samoset Resort. The planning committee has proposed a topic for the bankruptcy break-out session at the conference: "Individual Chapter 11 cases and business Chapter 13 cases: Are they square pegs in round holes?" The planning committee is waiting for the topic to be approved and then will seek speakers.

Judge Fagone also reported that he and Judge Cary would like to see proposed changes to the Local Rules posted on the Court's website for public comment before the Judges approve the proposed changes and submit to the District Court for approval.

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

As indicated above, revisions to the Local Rules to conform with the new Official Forms and the amendments to the Federal Rules of Civil Procedure are complete and posted on the website.

This item will be removed from 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 (the "Standing Order").

Judge Fagone circulated proposed language to add to Local Rule 5005-4, a copy of the proposed language is attached hereto. The purpose of the proposed language is to direct attorneys to the Administrative Procedures and the Standing Order. The proposed change to Local Rule 5005-4 was unanimously approved. Judge Fagone will discuss the proposed change with Chief Judge Cary and take it from there.

There was consensus among committee members that these issues should be the subject of a future brown bag lunch.

This item will be removed from 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?

The subcommittee reported that it has reviewed the issue and that it does not recommend any changes to the Local Rules. In the opinion of the subcommittee, the issue has not risen to the level of a problem. The most important aspect of the certificate of service is its accuracy. Filers are permitted to tailor the certificate of service to ensure its accuracy. Rather than try to address this issue through a change in the Local Rules, the subcommittee recommends that the issue be discussed at a future brown bag lunch.

This item will be removed from 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?

After discussion of this issue, it was decided that this item will be removed from 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?

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.*”

The committee discussed whether the debtor has the ability under the Bankruptcy Code to withdraw a Chapter 13 plan. The committee then discussed several means of addressing the issues raised by Mr. Fessenden including the following: including within the denial of confirmation a short deadline for refileing a plan, requiring a debtor to request permission to withdraw a plan and include a deadline for refileing within the order granting permission to withdraw, requiring any withdrawal of a plan to be accompanied by a new plan or a request for time to file a new plan, requiring plan changes to be accomplished through plan modifications rather than a withdrawal, or addressing the issue through case management rather than through a Local Rule.

Mr. Fessenden will track plan withdrawals and delays in refileing to determine the extent of the problem before further discussions continue.

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?

Mr. Clement circulated a proposed amendment to Local Rule 1009-1 to require that amendments to schedules and statements be conspicuously marked. The proposed amendment to Local Rule 1009-1 is attached. The committee discussed the proposed amendment, expressed concern about the effect on Schedule I and J, and concluded that practitioners should have flexibility in determining how best to mark changes conspicuously. Mr. Clement will circulate a revised proposed amendment to Local Rule 1009-1.

This item will remain on the agenda.

11. Other Matters: Issues for Future Agendas.

a. Ms. Lewis raised an issue regarding the emerging practice of placing a time deadline (earlier than midnight) for filing an objection to a motion that is not filed on an expedited or emergency basis. Ms. Lewis will analyze the issue and report back to the committee.

b. Mr. Morrell raised an issue regarding discovery in contested matters. Mr. Morrell reported that certain counsel are taking the position that no discovery is permitted in contested matters absent court order permitting discovery. Mr. Morrell and Ms. Bopp-Stark will analyze the issue and report back to the committee.

These items will be added to the agenda.

12. Next Meeting.

The next meeting will be on Tuesday, June 14, 2016, at 10:00 am at the Bankruptcy Court in Portland and the teleconference room at the Court in Bangor.

RULE 5005-4 ELECTRONIC FILING

The Bankruptcy Court Clerk may accept for filing documents submitted, signed, verified, or served by electronic means that are consistent with technical standards that the Judicial Conference of the United States may establish and that comply with administrative procedures established by the Bankruptcy Court. The Bankruptcy Court has established Administrative Procedures for Filing, Signing, Maintaining, and Verifying Pleadings and Other Documents in the Electronic Case Filing System (the “Administrative Procedures”) and has issued one or more standing orders approving the Administrative Procedures. The Administrative Procedures and the orders regarding them are available on the Bankruptcy Court’s website.