

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

Meeting Minutes – April 11, 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 April 11, 2017.

Members of the Committee in attendance were Bankruptcy Judge Michael A. Fagone, Randy J. 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. Nathaniel R. Hull, Esq. was absent.

1. Approval of Minutes of Prior Meeting. Minutes of the January 17, 2017 meeting were approved.

2. Chair Announcements. Mr. Creswell reported that the American Bankruptcy Institute had announced the creation of the ABI Commission on Consumer Bankruptcy. The Commission's work was to begin in April 2017, and the Commission will be comprised of 15 bankruptcy experts from around the country in different parts of the consumer bankruptcy system representing diverse stakeholders. There will also be 3 subcommittees of the Commission: The Committee on Chapter 7; The Committee on Chapter 13; and the Committee on Case Administration and the Estate. Each of these Committees shall have 15 members, also from a cross-section of bankruptcy experience. Mr. Molleur indicated that he and Daniel Cummings, Esq. has been selected to serve on one of the Committees to the Commission. The ultimate goal of the Commission was to study the many aspects of consumer bankruptcy practice under the Code and to make recommendations for improvement of the Code and the actual practice of consumer bankruptcy law for interested parties.

Mr. Creswell also reported that the Clerk's Office issued a Memorandum, dated February 14, 2017, concerning Motions for Relief from Stay and a proposed new Standardized Form of Order. The Memorandum concerned the Bankruptcy Court's consideration of potentially using a standardized form of Order for all Motions for Relief from Stay under Chapters 7, 12, and 13, and the Memorandum requested comments or other feedback from the Bankruptcy Bar by March 17, 2017. The Memorandum and the proposed new form of Order are available on the Bankruptcy Court's website.

3. Clerk's Office Report. Mr. Leddy reported that the federal government's continuing resolution for funding expires on April 28, 2017, and that while it was hoped and anticipated that a further continuing resolution funding the government, including the United States Bankruptcy Courts, through September 2017 was expected by April 28, the Clerk's Office was preparing for the possibility of a governmental shutdown.

Mr. Leddy also reported that during the week of May 8 a new sound technology and system was going to be installed in the Bankruptcy Courtroom in Portland. This was Phase II of the continuing renovation and upgrading of the Courtroom facilities, and that additional revisions (under Phase III) would be coming in both Portland and Bangor.

Finally, Mr. Leddy indicated that revisions to Bankruptcy Court Local Rule 3015-3, concerning noticing and timing of hearings on proposed Chapter 13 plans, were pending with the US District Court for immediate approval.

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?

Prior to the meeting, Mr. Sleeper circulated proposed language and revisions to Local Rule 9013-1(d)(1) to address the potential need of express consent from a co-debtor in Chapter 13 cases for a consented-to Motion for Relief from the Stay and the Codebtor Stay (under § 1301 of the Bankruptcy Code), which was as follows: “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 any non-filing co-debtor if relief from a codebtor stay is sought.”

After discussion, it was determined that Mr. Sleeper would circulate to the Committee by email additional language and revisions to both Local Rule 9013-1(d)(1) and 4001-1(g) to address the issues raised above, and, upon approval by the Committee by email vote, such proposed language would be adopted and a request for formal approval from the US District Court would be made. The issue would remain on the agenda until final resolution.

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

At prior meetings, Judge Fagone had noted that the new Federal Rules of Bankruptcy Procedure (effective December 1, 2016) had, in part, addressed issues concerning and raised in the US Supreme Court’s decision in *Stern v. Marshall*, and that the Local Rules Committee should consider whether any of the Local Rules (7008-1 and 7012-1, in particular) required revision in light of the new FRBP.

Prior to the meeting, Judge Fagone and Mr. Creswell had met to discuss these issues and it was recommended to the Committee that Local Rules 7008-1 and 7012-1 be eliminated in their entirety due to the recent changes to Federal Rules of Bankruptcy Procedure 7008 and 7012. In essence, those two Local Rules were either superfluous or continuing to use language (core/non-core distinction) that had been superseded by the FRBP in light of the Supreme Court’s decision in *Stern v. Marshall*.

After discussion, it was resolved to eliminate entirely Local Rules 7008-1 and 7012-1. The issue having been resolved, this item was to be removed from the agenda.

6. Uniform/National Chapter 13 Plan Adoption – Status of Working Group.

Judge Fagone stated that the Working Group analyzing, considering, and revising the new “national” Chapter 13 plan (with an effective date of December 1, 2017) had met and was making good progress in its review and work. Given the observations and discussions thus far, it was possible, perhaps likely, that the District would “opt out” of the standard national Chapter 13 plan and propose a plan more contoured to practice in this District. Additional meetings were scheduled for May, and there was some possibility that the Working Group’s proposed plan would be ready for public comments in July 2017.

This item will remain on the agenda.

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

At prior meetings, the issue of severing Chapter 13 plans/cases had been discussed, with the overarching concern that there is little in the way of substantive or procedural guidance for how to deal with such severed Chapter 13 cases and/or plans.

After some additional discussion, it was acknowledged that many of the issues associated with severing Chapter 13 cases and/or plans were substantive in nature, and that it made little sense to construct a procedural framework around the issue until the substantive problems, issues, or concerns with the practice had been addressed, likely through the Courts in actual cases. The Committee also noted that it likely made sense to refer the issue to the Committee on Chapter 13 cases, as the sub-group of the new ABI Commission on consumer bankruptcy practice for consideration and review on a substantive basis.

The issue having been fully addressed with no action necessary or feasible by the Committee at this time, this item was to be removed from the agenda.

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

The Committee continued its discussion about whether to enhance the Local Rules relating to Alternative Dispute Resolution. After a further brief discussion led by Mr. Cope of the issues involved, and the various mediation practices and models in other jurisdiction, the Committee determined that Local Rule 9012-2 was sufficient for present purposes and that no more formalized mediation rules or structures were required.

The issue having been fully addressed with no action necessary by the Committee at this time, this item was to be removed from the agenda.

9. Motions to Expedite and Hearing Expedition Process. Mr. Creswell reported back to the Committee concerning methods and practices in other jurisdictions for handling motions to expedite hearings and on ways in which the practice in this jurisdiction could

potentially be improved. After a discussion of the possible revisions to the current practice and rules relating to hearings on an expedited basis, and a notation that the Bankruptcy Court as of late had demonstrated a willingness to find cause for such relief more strictly than in the past, it was resolved that no revisions to the current Local Rules for hearings on emergency or expedited relief was necessary or warranted.

The issue having been fully addressed with no action necessary by the Committee at this time, this item was to be removed from the agenda.

10. Other Matters/Issues for future Agendas.

- Mr. Morrell raised the issue of Local Rule 2016-2 and the proper application of prepetition retainers in Chapter 13 cases. The issue will be placed on the agenda and discussed at the next meeting.
- Mr. Creswell raised the issue of District Court Local Rule 16.3(a)(3), which had been reported to a Committee member by a local bankruptcy practitioner, of consistency with the Federal Rules of Bankruptcy Procedure governing bankruptcy appeals. The issue will be placed on the agenda and discussed at the next meeting.

11. Next Meeting. The next meeting will be on Tuesday, May 23, 2017 at 10:00 am at the Bankruptcy Court in Portland and the teleconference room at the Court in Bangor.