

MINUTES
United States Bankruptcy Court for the District of Maine
Local Rules Committee Meeting
April 30, 2019

Present: Mr. Creswell (Chair), Chief Judge Cary, Mr. Leddy, Mr. Dudley, Mr. Molleur, Mr. Hull, Ms. Dye (on behalf of Judge Fagone), Mr. Crosman, Mr. Anderson, Ms. Doil, Mr. Morrell, Mr. Sleeper, Mr. Wholly
Absent: Ms. Economy

1. Approval of Minutes of Prior Meeting.

Minutes from March 14, 2019 meeting will be circulated for approval shortly and, once approved, posted on the court's website. Mr. Creswell will finalize the previous minutes that have not yet been approved.

2. Chair Announcement.

- Happy Birthday to Alec Leddy!
- Mr. Creswell corrected his error from the Portland brown bag luncheon – 11 U.S.C. § 726(a)(3) only applies in Chapter 7 cases. Apologies to Will Sandstead, Esq.

3. Clerk's Office Report.

- The Court recently completed its latest series of brown bag luncheons. The next series will likely be in late 2019, with possibly additional sites added (North).
- A new evidence presentation system will be installed in the Bangor courtroom in late 2019. It will likely be the same or similar to the system in Portland.
- A new page has been put up on the Court's website that specifically deals with the evidence presentation system.
- Chief Judge Cary congratulated Mr. Dudley for becoming a member of the Maine Bar. Congratulations Andrew Dudley, Esq.!

4. Local Rule 3007-1 – Claims – Objections & Local Rule 3015-3 – Allowance and Payment of Claims by the Trustee.

Virtually the entire meeting was spent discussing the potential overhaul/revision to the MAD process through revisions to Local Rules 3007-1 (objections to claims) and 3015-3 (chapter 13 confirmation). Proposed revisions to the language of both Local Rules was circulated and discussed by the Committee.

3007-1(a) – Proposed language was offered refining and substantially reducing the express guidance to parties and counsel for the initial hearing on an objection to claim. Substantial debate and discussion by the Committee on what the language should say and provide to best guide practitioners, but which guidance is also found elsewhere in the Local Rules. Following a vote the Committee members, it was decided to provide more express guidance in the Local Rule than shortening it with just cross-references to other Local Rules.

Also deleted from the first proposed draft of Local Rule 3007-1(a) was any reference to Local Rule 9013-1. There was considerable discussion regarding whether any reference to 9013-1 should remain in Local Rule 3007-1(a), which refers to motions practice. It was potentially

confusing to retain references to Local Rules 9013-2 and 9014-1. Objections to claims is different from motions practice, and part of the impetus in revising the MAD process was to disentangle claims objections to the motion practice paradigm. Further revisions to the proposed language to Local Rule 3007-1 was necessary.

Local Rule 3007-1(b)(1) – Extensive discussion about when objections to late-filed claims are due. Goal of this subsection is to create a simple, uniform rule for when objections to claims are due (taking into account some differences in claims-objection deadlines under the Bankruptcy Code). It was also noted that Federal Rule of Bankruptcy Procedure 3002(c)(6) deals with late-filed claims and when a creditor is first required to seek Court permission to file such a claim. Finally, § 502 of the Code also impacts claims and when they are allowed.

After discussion, the Committee decided to add “timely filed” to Local Rule 3007-1(b) and 3007-1(b)(1).

Local Rule 3007-1(b)(2). The Committee discussed adding a subsection 2 to address claims filed pursuant to 11 U.S.C. § 1305. Mr. Sleeper and Mr. Crosman will draft language and circulate. There should be a deadline for filing “1305 claims.”

Local Rule 3007-1(c). There were no comments regarding this section. The remainder of the Local Rule shall be eliminated.

The Committee voted unanimously in favor to the recommended changes to Local Rules 3007-1 and (necessary revisions to Local Rule 3015-3 to correspond to the revisions to Local Rule 3007-1), as modified by the discussion at the meeting and reflected in these minutes.

Mr. Creswell will circulate proposed revisions to Local Rule 3007-1, the Committee will have one last opportunity for comment, and then the Local Rule will be posted for public comment.

This item will come off the agenda.

5. Local Rule 2016-2 – Compensation of Professional - Retainers.

This was an item from the previous meeting. Mr. Morrell discussed the issue with respect to Chapter 11, in particular Local Rule 2016-2, which relates to retainers in excess of \$25,000. In essence, the reference to \$25,000 provided the unfortunate and unintended negative inference that retainers under \$25,000 could be dealt with by debtor’s counsel without regard to the requirements of Local Rule 2016-2 (or possible applicable Professional Rules of Conduct).

After discussion, it was determined by the Committee to eliminate the reference to \$25,000 in Local Rule 2016-2 (to make clear the Rule applies to all retainers, regardless of amount). The Committee also elected to make specific reference to the Maine Rules of Professional Conduct regarding the treatment of client funds and retainers to make clear that such rules apply to retainers held in bankruptcy cases. With those proposed revisions, Mr. Morrell will send Mr. Leddy a clean version of the proposed revised Local Rule 2016-2 for public comment.

This item will be removed from the agenda.

6. Local Rules 9013-1(d)(1) – Scheduling Hearings.

Mr. Molleur explained that there is a provision for small business bankruptcies where you can file a motion to get conditional approval of a disclosure statement at the same time that you file a plan. It is pretty routine as there are forms for the Small Business Bankruptcy. Unfortunately, our rules do not list this type of motion for approval under the list of motions that can be approved without a hearing.

A vote was had to add a motion to conditionally approve the disclosure statement in small business chapter 11 case to the list at 9013-1(d)(1). All were in favor.

Other types of motions were discussed. In particular, consent motions to continue hearing. Is 9013-1 the correct place to add this motion? All is dealt with in 9045-1. Couldn't we do a change within 9045-1 and reference application to 9013. Mr. Sleeper will circulate a change to 9045-1 and this item will be discussed at the next meeting.

7. Federal Bankruptcy Rule Revisions Effective Dec. 1, 2019 – FRBP 5005.

This item was not reached and will remain on the agenda.

8. Review of Local Rules for Consistency/Cross-References/Updating,

The Local Rules will be divided among various members for review for the purpose of updating, confirming proper cross-references, and consistency in text.

9. New Business/Matters/Issues.

Mr. Dudley's enduring concerns with respect to the overhaul of the MAD process and Local Rule 3007-1 with respect to the lack of a centralized document or docket entry for readily identifying allowed/disallowed/treatment of claims to be discussed. Mr. Dudley to begin working on a proposal to address that concern.

10. Scheduling Next Meeting.

- June 25, 2019 at 10:00 a.m.