

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

Meeting Minutes – June 14, 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 June 14, 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., Randy Creswell, Esq., Allison A. Economy, Esq., Peter C. Fessenden, Esq. (Standing Chapter 13 Trustee), Alec Leddy, Esq. (Clerk of Court), Jessica A. Lewis, Esq., Stephen G. Morrell, Esq. (Assistant U.S. Trustee), and Andrea Bopp Stark, Esq. Richard A. Silver, Esq. was absent.

1. Approval of Minutes. Mr. Clement suggested revisions to the Minutes. Minutes of the March 29, 2016 meeting were approved with such revisions.

2. Chair Announcements. There were no announcements from the Chair.

3. Clerk's Office Update.

Mr. Leddy reported that a new section has been added to the Court's website where proposed changes to the Local Rules will be posted for public comment before the Judges approve the proposed changes and submit them to the District Court for approval. To the extent comments are posted, the comments will be brought to the Committee for review to determine whether the proposed changes need further revisions.

Mr. Leddy stated that the Court will be closed on September 1 for a one-day offsite strategic planning session to be facilitated by Ms. Phyllis Drum of the Federal Judicial Center in Washington, D.C. Ms. Drum will be contacting some members of the bar for input on the Court's performance.

Mr. Leddy reported that the Court will be losing another staff member at the end of the summer and may not fill the position. If so, there may be an issue in the Court's ability to continue to accept cash payments in Bangor. The Court is searching for a creative solution to this potential problem.

Judge Fagone reminded the Committee that additional amendments to the Federal Rules of Bankruptcy Procedure will become effective in December of this year and may require revisions to the Local Rules.

4. Chapter 12 Rules.

This item remained on the agenda from the previous meeting.

Issue: Should the Local Rules be amended to make Chapter 12 Practice similar or identical in appropriate respects to Chapter 13 practice?

Mr. Fessenden reported that Judge Fagone is reviewing the Chapter 13 Plan in light of his experiences on the bench. Mr. Fessenden suggested that further discussion on this issue be postponed pending such review of the Chapter 13 Plan and pending anticipated changes to the Federal Rules of Civil Procedure.

This item will be removed from the agenda.

5. Restrictions on Time to Re-File a Withdrawn Plan

This item remained on the agenda from the previous meeting.

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.

As requested by the Committee, Mr. Fessenden informally tracked plan withdrawals and delays in re-filing to determine the extent of the problem. Mr. Fessenden reported that the problem has not been present in the Court in several months. In light of this information, the Committee declined to amend the existing Local Rules on this subject.

This item will be removed from the agenda.

6. Consider Requirement that Amended SOFA’s Show Changes. [Mr. Clement]

This item remained on the agenda from the previous meeting.

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 previously 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 was approved and will be posted on the Court’s website for public comment.

This item will be removed from the agenda.

7. Local Rule 9013-1(e): “Response Date” versus “Response Time”.

Issue: Some practitioners routinely set a response deadline to include not only the date, which is governed by the Local Rules, but also the time (e.g., “4:00 p.m.”), which is not. Should this practice be permitted? Is it authorized? May practitioners safely ignore the time deadline? Should the Local Rules speak to this issue?

Ms. Lewis reported that the Court’s Administrative Order indicates that midnight is the default filing deadline in instances where the Local Rules do not otherwise establish a time deadline. After discussion, there was consensus that the Local Rules sufficiently address this

issue. Rather than tweaking the Local Rules, the issue will be discussed at the upcoming Brown Bag lunches with Judge Fagone and Judge Cary.

This item will be removed from the agenda.

8. Discovery in Contested Matters.

Issue: Is discovery permitted in contested matters without express authorization by the Court? Consider the interplay of the following:

- a. FRBP 9014(c) (in contested matters, Rule 7026 shall apply unless the court directs otherwise, provided, however, that subdivisions 26(a)(1) (mandatory disclosure), 26(a)(2) (disclosures regarding expert testimony) and 26(a)(3) (additional pre-trial disclosure), and 26(f) (mandatory meeting before scheduling conference/discovery plan) shall not apply in a contested matter unless the court directs otherwise));
- b. FRBP 7026 (describing scope, limits, timing, and sequence of discovery);
- c. LBR 9014-1(3) (“Unless otherwise ordered by the Court, Fed. R. Bankr. P. 7026 shall not apply to contested matters.”);
- d. LBR 9029-3 (“To the extent not modified or amended by these Local Rules, the following District Court Rules, as reasonably adapted to bankruptcy practice, shall apply in this court to the extent they are not inconsistent with the provisions of the Bankruptcy Code and the Fed. R. Bankr. P.: District Court Rule[] . . . 26(a);”
- e. District Court Rule 26(a) (describing discovery rules).

Judge Fagone, after consulting with Ms. Bopp Stark and Mr. Morrell, presented a proposed revision to Local Rule 9014-1(3). The intent of the proposed revision is stop the free flow of discovery before the parties have an opportunity to discuss the necessity, timing, and scope of discovery with the Court. It makes the Court’s supervisory role in the discovery process explicit. After discussion and consensus that further revisions are needed, Mr. Morrell agreed to further revise Local Rule 9014-1(3) to reflect the Committee’s discussion and circulate the proposed Local Rule 9014-1(3) for electronic approval.

This item will be removed from the agenda if the issue is resolved prior to the next meeting.

9. Should Consented-To Motions for Relief from Stay Require the Consent of Co-Debtors Protected by the Stay Under §§ 1201 and 1301?

Issue: Rule 4001-1(g) requires consent of the trustee and the debtor for a M/R/S to be filed as consensual, but does not require consent from codebtors. Should LBR 4001-1(g) require consent of codebtors protected by the stay?

After extensive discussion, the Committee decided not to recommend any Local Rule changes. The Committee acknowledges the dilemma faced by secured creditors seeking relief from stay to proceed against property that is owned by a codebtor protected by the stay. With consent of the trustee and the debtor, the creditor may file a consensual motion for relief from stay that will result in an order entered without a hearing that will lift the stay, but such an order should only lift the stay with *respect to the debtor*. Without the consent of the codebtor, the creditor's motion should not seek consensual relief from the stay with respect to the codebtor. That means the codebtor stay would appear to remain in place. If a creditor wants relief from stay as to a non-consenting codebtor, then the creditor must file a regular, nonconsensual motion as to the codebtor. This might result in two motions – – a consented to motion involving the debtor's interest in the property, and a non-consented to motion with respect to the codebtor's interest in the property.

It may be that creditors sometimes ignore the existence of a codebtor, but that is not countenanced by the Rules. The Committee concludes that the existing Rules are sufficient.

[NOTE: Based on further analysis by Judge Fagone and Mr. Clement following the meeting, this item will remain on the Agenda for further discussion.]

10. Global Revision to Local Rules.

This item was tabled until the next meeting. This item will remain on the agenda.

11. Other Matters: Brown Bag Lunches.

Judge Fagone and Judge Cary have scheduled Brown Bag Lunches in Bangor (9/8), Portland (9/28), and Augusta (9/30). The Judges are looking for suggestions for topics to discuss during these lunches.

12. Next Meeting.

The next meeting will be on Tuesday, October 11, 2016, at 10:00 am at the Bankruptcy Court in Portland and the teleconference room at the Court in Bangor.