

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

Meeting Minutes – June 23, 2015, 10:00 A.M.

(Drafted by Darcie Beaudin)

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 23, 2015. Members of the Committee in attendance were Darcie P. L. Beaudin, Esq., Roger A. Clement, Jr., Esq. (Chair), Randy Creswell, Esq., Peter C. Fessenden, Esq. (Standing Chapter 13 Trustee), Alec Leddy, Esq. (Clerk of Court), Richard A. Silver, Esq., and Andrea Bopp Stark, Esq.

Steven G. Cope, Esq., Judge Michael A. Fagone, Stephen G. Morrell, Esq. (Assistant U.S. Trustee), and Perry O’Brian, Esq. were absent.

I. Approval of Minutes. Minutes of the April 14, 2015 meeting were approved. Mr. Clement will forward to Mr. Leddy a final version to be posted on the Court’s website.

II. Chair Announcements.

- a. Mr. Clement commented that a brown bag lunch will be held on April 15 in Portland and that the new Dean of the Law School, Dean Danielle Conway, will attend.

III. Clerk’s Office Update.

Report by Alec Leddy

- a. Mr. Leddy reported that bankruptcy filings are down since May as compared to last year.
- b. Mr. Leddy reported that the brown bag lunches in August and Bangor were lightly attended.
- c. Mr. Leddy reminded the committee that an RSS feed feature has been added to the Court’s website. The home page contains a symbol for the RSS feed. Those who sign up to receive the RSS Feed will receive anything new posted to the following pages: News & Announcements, Opinions, Local Rules, and Hearings. Mr. Leddy is now placing United States Supreme Court and First Circuit Court of Appeals opinions on the RSS feed.
- d. Mr. Leddy reported that the IT Manager, Jason, is moving to Arizona and he will not be replaced due to lack of funding. The Court has two other IT staff, one in Bangor and one in Portland.
- e. Mr. Leddy reported that NextGen will not be ready until next year.

IV. 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 will address 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 Alec 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.

As Messrs. Morrell and Cope were not present, this matter was postponed until the next Committee meeting. This item will remain on the agenda.

V. Discovery in Contested Matters.

This item remained on the Agenda from the previous meeting.

Issues: Are all discovery processes and methods available to litigants in adversary proceedings also available to parties in contested matters in light of Fed. R. Bankr. P. 7026 and 9014, Local Bankruptcy Rules 9014-1(a)(1) and (3) and 9029-3, and District Court Rule 26? For example, are parties in contested matters entitled to discovery before the first hearing in a contested matter? Under the current rules, does ambiguity exist as to whether parties in a contested matter are entitled to discovery before the first hearing? If not, does the rule comport with the procedure for adversary proceedings? Should it? If ambiguity exists, how should the Local Rules be amended to resolve the ambiguity?

The subcommittee comprised of Messrs. Fagone and Creswell and Ms. Bopp-Stark, reviewed this issue further, and are still deliberating whether anything should be done. The

subcommittee has drafted language, but it is not ready for distribution to the entire Committee. Federal Rule 26 (d)(1), made applicable in bankruptcy cases by Fed. R. Bankr. P. 7026, prohibits discovery until a Rule 26(f) conference has been held. Local Rule 9014-1(a)(3) provides that Fed. R. Bankr. P. 7026 does not apply to contested matters unless otherwise ordered by the Court. Should parties be able to commence discovery in a contested matter before the first court appearance? The subcommittee is considering whether to recommend deleting 9014-1(a)(3) or adding a rule providing that discovery in a contest matter may not commence prior to the first hearing on that particular matter. Either of these changes would make discovery practices in contested matters similar to those in adversary proceedings.

This item will remain on the agenda.

VI. 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?

Mr. Silver reported that the subcommittee is analyzing this issue, but it is not ready for discussion with the entire Committee.

This item will remain on the agenda.

VII. 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?

Mr. Creswell previously volunteered to draft an outline of the interplay between the Federal and Local Rules, and to propose alternative language to eliminate ambiguity.

This item will remain on the agenda.

VIII. Global Review of Local Bankruptcy Rules.

Mr. Creswell and Ms. Beaudin have undertaken this task. The review is on hold pending the anticipated overhaul of the Federal Bankruptcy Rules, which will become effective December 1st. The subcommittee may need to review the Local Bankruptcy Rules to determine whether any changes need to be made in light of the changes to the Federal Bankruptcy Rules.

Mr. Leddy reported that the Bankruptcy Forms will be completely overhauled as well.

Mr. Creswell volunteered to send the Federal Bankruptcy Rules that will change to Mr. Clement and Mr. Clement will assign Rules to different members of the Committee to review and analyze.

The Committee will organize a CLE to be held in October. Mr. Fessenden agreed to Chair the Panel and Ms. Beaudin and Ms. Bopp-Stark agreed to participate on the Panel.

This item will remain on the agenda.

IX. 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?

It previously was decided and that Mr. Fessenden will draft a rule for consideration to include a Motion to Allow and Disallow Claims procedure as part of the Chapter 12 practice.

This item will remain on the agenda.

X. 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 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.”

Ms. Beaudin is analyzing whether any prohibition exists on establishing a deadline for plan confirmation in Chapter 13 cases.

This item will remain on the agenda.

XI. Next Meeting.

The next meeting will be on Tuesday, September 24, 2015, at 10:00 am at the Bankruptcy Court in Portland and the teleconference room at the Court in Bangor.