

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

Meeting Minutes – September 25, 2015, 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 September 24, 2015. Members of the Committee in attendance were Judge Michael A. Fagone, Darcie P. L. Beaudin, Esq., Roger A. Clement, Jr., Esq. (Chair), Steven G. Cope, Esq., Randy Creswell, Esq., Alec Leddy, Esq. (Clerk of Court), Richard A. Silver, Esq., and Andrea Bopp Stark, Esq.

Peter C. Fessenden, Esq. (Standing Chapter 13 Trustee), Stephen G. Morrell, Esq. (Assistant U.S. Trustee), and Perry O'Brian, Esq. were absent.

I. Approval of Minutes. Minutes of the June 23, 2015 meeting were approved.

II. Chair Announcements. None.

III. Clerk's Office Update.

Report by Alec Leddy

a. Mr. Leddy reported that another case administrator has left. She will not be replaced due to lack of funding and reduced case filings.

b. Mr. Leddy reminded the committee that new bankruptcy forms go into effect on December 1. This will require changes in the Clerk's office.

IV. Update on MSBA Bankruptcy Conference

Mr. Clement reported that there will be a full day bankruptcy CLE on Friday, October 23 from 8:30 a.m. to 4:30 p.m. at the Hilton Garden Inn in Freeport. The conference will include a session on the changes to the Official Bankruptcy Forms, which will become effective December 1. Mr. Fessenden will chair the conference.

V. Revisions to Local Rules to Conform with New Official Forms

The committee agreed that this task should wait until the new year. At that time, the Local Rules should be reviewed to determine whether references to form numbers in the Local Rules need to be revised to reflect the new changes in the Official Forms. The substance of the Local Rules may also need to be adjusted in light of these changes. Mr. Leddy and Judge Fagone will conduct an initial review.

VI. 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 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.

The committee discussed whether a problem exists in this jurisdiction. In this jurisdiction, when someone indicates there has been consent, 99% of the time, there has been consent.

A subcommittee consisting of Judge Fagone, Mr. Morrell and Mr. Cope will analyze whether the provisions of the Administrative Procedures should be converted from a standing order to a Local Rule.

VII. 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 have determined that nothing further needs to be done.

This item will be removed from the agenda.

VIII. 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 they discussed with Mr. Leddy the option of including a “check the box” option when filing a motion to indicate that no service was provided in addition to the service that is provided through the NEF system. The “check the box” option may have the added benefit of causing filers to stop and double-check if notice was given. Mr. Leddy is going to consider this option further.

The subcommittee reported that they explored an alternate option of including a Local Rule that provided that a certificate of service is not required if you provide no service other than the service through the NEF system. The problem with this option, however, is that the Clerk’s office would not know whether they need to be looking for a certificate of service in each matter.

The subcommittee reported that they also explored an alternative option of including two proposed forms for certificates of service: one to use when only service through the NEF system will be given, and one to use when additional service is given.

The subcommittee also raised the issue of whether the deadline for filing a certificate of service should be tied to the filing of the document rather than the date of the hearing, and particularly whether there should be a requirement that service be made within two days of filing a document.

The subcommittee will continue its review and make a recommendation.

This item will remain on the agenda.

IX. 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 circulated to the committee alternative language to eliminate ambiguity. Members of the committee will review and provide comments prior to the next meeting.

This item will remain on the agenda.

X. Global Review of Local Bankruptcy Rules.

This item will be removed from the agenda temporarily. After the changes in the Federal Bankruptcy Rules and Official Forms are in effect, the Local Rules will be divided among the members of the committee for a global review. Mr. Creswell will create a “style manual” to guide the review and maintain consistency.

XI. 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 was tabled in Mr. Fessenden’s absence. This item will remain on the agenda.

XII. 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 was tabled in Mr. Fessenden's absence. This item will remain on the agenda.

XI. Next Meeting.

The next meeting will be on Thursday, November 12, 2015, at 10:00 am at the Bankruptcy Court in Portland and the teleconference room at the Court in Bangor.