

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

**Meeting Minutes – November 12, 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, Roger A. Clement, Jr., Esq. (Chair), Steven E. Cope, Esq., Randy Creswell, Esq., Peter C. Fessenden, Esq. (Standing Chapter 13 Trustee), Alec Leddy, Esq. (Clerk of Court), Stephen G. Morrell, Esq. (Assistant U.S. Trustee), and Richard A. Silver, Esq.

Darcie P. L. Beaudin, Esq., Andrea Bopp Stark, Esq., and Perry O'Brian, Esq. were absent.

1. Approval of Minutes. Minutes of the September 25, 2015 meeting were approved.
2. Chair Announcements. None.
3. Clerk's Office Update.

Report by Alec Leddy: Mr. Leddy reminded the committee that new bankruptcy forms go into effect on December 1. This will require changes in the CM/ECF system, which changes will be made prior to December 1. Mr. Leddy noted that the new forms cannot be used with the CM/ECF system prior to December 1, 2015.

4. Update on MSBA Bankruptcy Conference

Mr. Fessenden reported that approximately 80 people attended the MSBA Bankruptcy Conference on Friday, October 23. Attendees gave excellent reviews. The Committee thanked Mr. Fessenden for his work in sharing and organizing the Conference.

5. Revisions to Local Rules to Conform with New Official Forms and Amendments to the Fed. R. Civ. P.

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 should be revised to reflect the changes in the Official Forms. The substance of the Local Rules may also need to be adjusted in light of these changes, and in light of recent amendments to the Federal Rules of Civil Procedure, also effective December 1, 2015. The amendments to the Federal Rules primarily relate to Rules 16, 26, and 37, and many of them relate to electronic discovery. Mr. Leddy and Judge Fagone will conduct an initial review.

6. 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 Mr. Leddy 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 subcommittee, comprised of Judge Fagone, Mr. Morrell and Mr. Cope, reported that they had met and started analyzing whether some or all of the provisions of the Administrative Procedures should be converted from a standing order to a Local Rule. The subcommittee expects to have a recommendation, and perhaps proposed new or amended Local Rules, at our next meeting.

7. 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 the 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 it has met and discussed this issue, and is considering up proposed revision to LBR 9042-1. Any final recommendation on this issue, however, should be deferred until the issues involved in paragraph 6, supra, are resolved as provisions now contained in the Administrative Procedures are implicated.

This item will remain on the agenda.

8. 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?

At the September 25 meeting, Mr. Creswell circulated to the committee alternative language to eliminate ambiguity. After discussion of this issue, it was decided that a wholesale rewriting of LBR 9013-1(d)(5) was not necessary. Judge Fagone volunteered to review and revise the existing language. It is expected he will present his proposed language at or before the next meeting.

This item will remain on the agenda.

9. 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?

Mr. Fessenden circulated a rough draft containing proposed revisions to LBR 3015-1, 3015-2, and 3015-3 that would add references to Chapter 12 that are, for the most part, parallel with the existing references to Chapter 13. Mr. Fessenden promised to further refine his proposed revisions, and to draft conforming revisions to LBR 3015-4. Mr. Fessenden will circulate proposed revisions prior to or at our next meeting.

10. 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. Mr. Fessenden will include the foregoing language in his proposed revisions to LBR 3015-3, and circulate them prior to or at the next meeting.

This item will remain on the agenda.

11. Review of “Admit/Deny” Requirement of LBR 9013-1(f)

The Committee discussed whether LBR 9013-1(f) should be revised to make the “admit/deny” requirement more like the requirement contained in Federal Rule of Civil Procedure 8(b)(6), which provides that a failure to deny a factual allegation constitutes an admission. Although the LBR contains a requirement that a responsive pleading in a contested matter admit or deny the allegations contained in a motion, the Rules are silent as to the consequences of failure to comply. During discussion, it was noted that practitioners may employ various strategies to determine what facts are in dispute, and that no revisions to the existing Local Rule are desirable.

This item will be removed from the agenda.

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

**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 agreed to report on potential changes to the Local Rules that would address this issue, and to report on how this issue is handled in other jurisdictions..

XI. Next Meeting.

The next meeting will be on Tuesday, January 12, 2016, at 10:00 am at the Bankruptcy Court in Portland and the teleconference room at the Court in Bangor.