

MINUTES

United States Bankruptcy Court for the District of Maine Local Rules Committee Meeting November 13, 2018

Present: Mr. Creswell, Mr. Leddy, Mr. Dudley, Mr. Cope, Mr. Molleur, Ms. Beaudin, Mr. Hull, Ms. Dye (on behalf of Judge Fagone)

Absent: Mr. Morrell, Mr. Sleeper, and Ms. Economy

1. Approval of Minutes of Prior Meeting.

Minutes from 09/25/18 meeting were previously circulated and approved. They have been posted on the website.

2. Chair Announcements.

- Mr. Creswell indicated that he is preparing for District Court plenary meeting being held December 19. Last year he reported that the Committee was working on the overhaul/review of the Chapter 13 process and this year it will be a continuation of that.
- Mr. Creswell reported that Chief Judge Cary expressed an interest in reviewing the Local Rules for consistency and cross references (See Agenda Item No. 11). Mr. Creswell suggested that it may be useful if Ms. Lewis and Ms. Dye, as the Judges' law clerks, assist as they are quite familiar with the Local Rules and would be good resources on where inconsistencies and issues may lie. Ms. Dye indicated her willingness to assist.
- Mr. Creswell announced that Ms. Bopp-Stark has resigned from the Committee.

3. Clerk's Office Announcements/Updates.

- Mr. Leddy relayed to the Committee that the most recent change to Local Rule 9013-1(b) has been through the entire process for approval, it was posted on the Court's website, and there were no comments. The proposed revision is now being considered by the Bankruptcy Court for implementation. Mr. Leddy also reported that Judge Fagone was stepping off the Committee in 2019 and that Chief Judge Cary would be the new liaison from the Bench for the Local Rules Committee.
- The Court has scheduled two brown bag lunches in January 2019. Bangor on the 24th and Portland on the 30th. These are both regularly scheduled hearing days.
- As discussed at the last meeting, federal rule changes (Bankruptcy, Civil) go into effect on December 1, 2018, and have been posted on the Court's website in the News and Announcement Section.
- As a result of a change in federal law, the Clerk's Office is changing its procedure for storm closings. If the Court is closed at least some staff will be required to telework. This change in the law might make it *more* likely that the Clerk's Office would close its physical offices, as there will almost always be staff available by phone and/or email to do the Court's business. Mr. Leddy noted that the US District Court's decisions on closing is separate from the Bankruptcy Court's and that they do not always align. Mr. Leddy stated he would investigate a push notification for closings. He also stated that closings and procedures will be placed on the Court's website.

4. Potential Revision/Practice Concerning Agreed Continuances Under Local Rule 9045-1.

There was minimal discussion about the status of this line item. It was agreed that no changes are currently needed.

This item will be taken off the agenda.

5. Local Rule 3002-2 – Administrative Expenses in Chapter 13.

Mr. Hull reported that a member of the bar had contacted him concerning the issue of administrative claims in Chapter 13/7 cases and the process for filing and otherwise having an administrative expense claim approved. The bar member's question appeared to arise from the situation in which the likely cost of seeking allowance and payment of the administrative expense claim may exceed the claim's value in the first instance.

Discussions were had regarding the current process under Local Rule 3002-2 concerning administrative expense claims and their allowance. After discussion, it was concluded that the process as it currently exists, while perhaps less than ideal in some instances in which an administrative claim is de minimus, nevertheless is satisfactory in the vast majority of cases. No action was recommended. Mr. Hull was to contact the bar member and advise them of the outcome of the discussion and the reasoning.

This item will be taken off the agenda.

6. Election for Small Business Case – Update Local Rules Regarding Same.

There appears to be a mis-reference or revision required in the Local Rules relating to small business cases and it was determined that a review of the Local Rule will be conducted during the anticipated overall review of the Local Rules in their entirety.

7. Procedure Regarding Application/Motion to Modify Confirmed Plans Under § 1329 of the Code, FRBP, and Local Rules.

Mr. Creswell thanked Mr. Dudley for his proposed revisions to Local Rule 3015-1. The proposed revisions were considered by the Committee and recommended for approval on the whole. The proposed revisions will next be considered by the Bankruptcy Court and implemented, if at all, once a broader review of the Local Rules relating to Chapter 13 practice is conducted following the recent implementation of the new forms and practice. Given the level of recent overhaul of the Chapter 13 practice nationally and locally, it was determined that it may be best to pause on any further revisions at this time.

8. Impending changes to the Fed. R. Bankr. P. and the official forms effective December 1, 2018 and whether Local Rules changes are necessary (effected Fed. R. Bankr. P. are: Federal Rules of Bankruptcy Procedure 3002.1, 5005, 7004, 7062, 8002, 8006, 8007, 8010, 8011, 8013, 8015, 8016, 8017, 8021, 8022, 9025, new Rule 8018.1, new Part VIII Appendix, and Forms 417A and 417C).

Mr. Creswell stated that there are a number of federal rule changes (Civil, Bankruptcy, Appellate) taking effect December 1, 2018. The federal bankruptcy rules revisions mostly deal with appellate procedure (the 8000 series). After discussion, it was concluded that there

were likely few Local Rules in need of revision to accommodate the new federal rule changes, with the possible exception of a new Local Rule 3002.1 to address changes to F.R.B.P. 3002.1 concerning HELOCs.

In particular, Mr. Leddy observed that F.R.B.P. 3002.1(b) required discussion. Mr. Leddy read the following from the Committee Notes.

Subdivision (b) is subdivided and amended in two respects. First, it is amended in what is now subdivision (b)(1) to authorize courts to modify its requirements for claims arising from home equity lines of credit (HELOCs). Because payments on HELOCs may adjust frequently and in small amounts, the rule provides flexibility for courts to specify alternative procedures for keeping the person who is maintaining payments on the loan apprised of the current payment amount.

A discussion was had regarding this issue and it was decided that the Local Rules Committee would not recommend a change to the Local Rules at this time. Nevertheless, it was determined that the change to this federal rule would be discussed at the next brown bag lunch to make practitioners aware of the new requirements.

9. Integration/Revision/Reformulation of Current MAD Procedure and Forms regarding same for Compliance with Current Form Chapter 13 Plan and Applicable Local Rules.

Substantial discussion was had concerning the current MAD procedure. Judge Fagone, Mr. Dudley, and Ms. Beaudin have had discussions as a sub-group considering possible changes to the current procedure. Further, the sub-committee has also proposed a revision to current Local Rule 3007-1. The entire process is still to be discussed and issues identified. The consensus of the Committee, however, is that the current MAD process will be replaced with a new procedure more to reflect the current requirements of the Bankruptcy Code and F.R.B.P. There is no current timetable for the change.

Mr. Dudley stated that he is exploring technological accommodations for the new proposed procedures. Mr. Leddy stated that the Clerk's Office is exploring CM/ECF processes through which objections to claims and the dispositions thereof would be reflected on the Claims Register.

This issue will remain on the agenda.

10. Local Rule 2016-2 – Proper Application of Prepetition Retainers.

The issue was not reached. It will remain on the agenda.

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

As stated previously, the Committee will be working with Chief Judge Cary to conduct a global review of the Local Rules for consistency and potential revisions as necessary.

12. Status of New Chapter 13 Procedures/Forms/Practice – General Issues and Discussion.

General discussion of current practice. No action necessary.

13. New Business/Matters/Issues.

It was reported that there will likely be a CLE for Chapter 13 practitioners on the new Chapter 13 practice and forms with or through the Maine State Bar bankruptcy section.

14. Scheduling Next Meeting.

- February 5, 2019 at 10:00