

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

Meeting Minutes – December 6, 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 on December 6, 2016.

Members of the Committee in attendance were Judge Michael A. Fagone, Andrea Bopp Stark, Esq., Roger A. Clement, Jr., Esq. (Chair), Allison A. Economy, Esq., Alec Leddy, Esq. (Clerk of Court), Darcie P.L. Beaudin, Esq., Steven E. Cope, Esq., Randy J. Creswell, Esq., and Peter C. Fessenden, Esq. (Standing Chapter 13 Trustee).

Stephen G. Morrell, Esq. (Assistant U.S. Trustee), F. Bruce Sleeper, Esq., and Richard A. Silver, Esq. were absent.

1. Approval of Minutes. Minutes of the October 11, 2016 meeting, as revised, were approved.

2. Chair Announcements. There were no chair announcements. Judge Fagone announced that Mr. Clement and Mr. Silver have come to the end of their terms as members of the Committee. He thanked them for their many years of good service. He welcomed Mr. Creswell who has stepped up to serve as the Chair of the Committee. Judge Fagone also reported that the Court is seeking to add one or two more members to the Committee.

3. Clerk's Office Update. Mr. Leddy reported that the Supreme Court litigation ended last week such that the Bankruptcy Court is back to its normal schedule in Portland. He also reminded the Committee that new Federal Rules of Bankruptcy Procedure and fees went into effect on December 1st. He specifically discussed Rule 9006, which was amended to eliminate the addition of 3 days for mailing if the pleading is served entirely through electronic means. This change mostly affects how long the Clerk's office waits before sending a pleading to Chambers.

Mr. Leddy also reported that some jurisdictions are implementing electronic service of debtors if debtors agree to accept service electronically. The Bankruptcy Court in this District is evaluating this option.

4. Discovery in Contested Matters. The Committee confirmed that the proposed amendment to LBR 9014-1(a)(3) that was discussed at the prior meetings is acceptable with a minor change:

Discovery. At the first hearing in a contested matter, the parties should be prepared to address the need for discovery and, if applicable, the issues and topics identified in Fed.R.Civ.P. 26(f)(3)(B)-(F). Discovery in a contested matter may not commence until authorized by order of the Court.

The proposed revised Local Rule has been posted on the Bankruptcy Court's website for public comment. If no comments are received within 30 days after posting, the amendment will be sent to the District Court for approval.

5. Should Consent Motions for Relief from Stay Require the Consent of Codebtors Protected by the Stay Under §§1201 and 1301?

Issue: Local Rule 4001-1(g) requires consent of the trustee and the debtor for a motion for relief from stay to be filed as consensual, but does not require consent from codebtors. If a M/R/S is consensual, then no hearing is required. See, LBR 9013-1(d). But, a consented-to M/R/S that does not include the consent of a codebtor should not lead to the relief that the movant truly seeks, which is to be free to foreclose on its collateral. Should LBR 4001-1(g) be amended to require consent of codebtors protected by the stay?

After discussion, the Committee determined that the issue is whether a party seeking relief from the automatic stay must obtain the consent of the codebtor in order for the motion to be granted without a hearing. Currently, LBR 9013-1(d) does not have provision for relief without a hearing even when the codebtor consents. Should a change be made to LBR 9013-1(d), to deal with exceptions to the hearing date requirement when the codebtor consents? If so, consider the following: “Motions for relief from the stay that have the consent of the debtor and of any trustee and committee appointed in the case, as well as of any non-filing codebtor if relief from a codebtor stay is sought.”

The Committee agreed that no changes should be made to LBR 4001-1(g). The Committee noted that §§ 1201(d) and 1301(d) of the Bankruptcy Code give the codebtor standing to object to a motion for relief from stay, thereby suggesting that the codebtor stay was intended to protect codebtors as well as debtors. Judge Fagone noted that there is no fee associated with a motion for relief from stay seeking relief as to the codebtor stay only. Mr. Leddy reported that the Court has a separate docketing event for motions seeking relief from the co-debtor stay only. The event is called "Relief from Co-Debtor Stay." There is no fee associated with that event. In contrast, the "Relief from Stay" event results in a fee, regardless what the motion says.

Ms. Economy circulated two opinions, one from this District and one from the Southern District of New York., suggesting that the codebtor stay is designed to protect the debtor, not the codebtor. The Committee decided to hold further discussion on the issue until the next meeting when Mr. Sleeper can be present and in a position to provide input.

This item will remain on the agenda.

6. New Federal Rules of Bankruptcy Procedure. Judge Fagone previously reported on new Federal Rules of Bankruptcy Procedure became effective on December 1, 2016. These new rules fall into the following categories: (a) rules dealing with Stern v. Marshall issues; (b) rules dealing with cross-border issues; (c) revisions to Rule 3002.1 (relating to chapter 13 plan payments on account of claims secured by the debtor’s principal residence); and (d) Rule 9006 (relating to time computation when service is effectuated electronically). Judge Fagone previously recommended that the Committee consider forming one or more subcommittees to consider whether these rule changes will necessitate changes to the Local Rules.

After further discussion, the Committee concluded that there is no need to address items (b), (c), and (d) above. Mr. Creswell agreed to look into item (a) and report back to the Committee at the next meeting.

Judge Fagone informed the Committee that, going forward, the Committee should be mindful that the Local Rules not be duplicative of the Federal Rules. The Committee should not seek to add any Local Rules unless there is a gap in the Federal Rules that needs to be addressed.

This item will remain on the agenda.

7. Uniform Chapter 13 Plans. Judge Fagone stated that Federal Rules 3015 and 3015.1 are likely to be amended to require Chapter 13 plans to conform to a federal form. These new Rules will likely take effect December 1, 2017.

Each district will have the ability to opt out, provided that a defined process is followed. The opt-out process will require an official comment period. Accordingly, the Committee discussed forming a subcommittee to analyze the “national” Chapter 13 plan, solicit input from members of the bar and other appropriate persons, and determine whether we would recommend pursuing a process for opting out of the national plan. The Committee discussed including chapter 13 practitioners who may not be on the Local Rules Committee in this process.

After discussion, the Committee decided to invite the following individuals to participate on this subcommittee and/or working group: Judge Fagone, Mr. Fessenden, Mr. Will Sandstead, Clerk Leddy, an attorney from Molleur Law Office, Mr. Sleeper, Mr. Richard Goldman, Ms. Economy, and Ms. Beaudin. The individuals will be contacted to determine whether they are willing to serve on the subcommittee.

This item will remain on the agenda.

8. Severed Chapter 13 Plans. Mr. Sleeper raised the issue of how severed chapter 13 plans should be dealt with. These are chapter 13 cases that are filed jointly, but then severed into two cases. It was agreed this item should remain on the agenda for our next meeting such that both Mr. Sleeper and Mr. Fessenden could be present to discuss the issue.

This item will remain on the agenda.

9. Alternative Dispute Resolution (LBR 9019-2). The Committee was asked to evaluate whether to enhance the Local Rules relating to Alternative Dispute Resolution. Judge Fagone informed the Committee that, unless compelling circumstances demonstrate or require otherwise, he is firmly opposed to mandatory mediation in any context. In light of Judge Fagone’s position, the Committee discussed whether the Local Rules could impose a structure to use in the event the parties voluntarily agree to mediation. Mr. Clement reported that the ABI has a committee on ADR which has put forth model rules for ADR. Mr. Cope agreed to locate and circulate the ABI’s model ADR rules for potential further consideration by the Committee.

This item will remain on the agenda.

10. Pro Hac Vice Admission of out of State retired attorneys to file bankruptcy petitions. Ms. Bopp Stark posed the question of whether the Local Rules could be amended to allow out of state retired attorneys to be admitted for the limited purpose of helping to file bankruptcy petitions, particularly for Pine Tree Legal Services. Mr. Leddy reported that the District Court is having a meeting to discuss admission rules in the upcoming weeks. Mr. Leddy

will report back to the Committee about the District Court's decision on this issue at the next meeting.

This item will remain on the agenda.

11. Process for Expedited Motions. Mr. Creswell raised the issue of whether there is a way to improve the process for filing and providing notice of expedited motions as such process is currently outlined in the Local Rules. He noted what he observed as an increased frequency of filing of expedited motions on Friday, with objections due on Monday, or other similarly truncated time-frames. He reported that other jurisdictions bring the motion to expedite to Chambers to either grant or deny in advance such that the parties know whether or not the Court will hear the substantive arguments at the scheduled expedited hearing. Judge Fagone will speak with Judge Cary to determine whether Judge Cary perceives this issue to be a growing problem or if there is interest in exploring potential improvements to the current process.

This item will remain on the agenda.

12. Next Meeting. The next meeting will be on Tuesday, January 17, 2017, at 10:00 am at the Bankruptcy Court in Portland and the teleconference room at the Court in Bangor.