

MINUTES OF MEETING OF  
STANDING LOCAL BANKRUPTCY RULES REVISION COMMITTEE  
DISTRICT OF COLORADO, BANKRUPTCY COURT  
May 14, 2019

A regular meeting of the Standing Local Bankruptcy Rules Revision Committee was called to order at 12:02 on Tuesday, May 14, 2019, by Chair Ted Hartl.

Attendance: The following Members, Ex-Officio Members and Judicial Advisors attended in person or by phone:

**Members**

Ted Hartl, Chair  
Bonnie Bell Bond, Whip  
Steven Mulligan  
Tara Salinas  
Michael Suchoparek, Secretary

**Ex-Officio Members**

Kenneth Gardner  
Adam Goodman  
Ross Hoogerhyde  
Doug Kiel  
Paul Moss  
Margaret Muff  
Steve Nichols  
Nicholas Santarelli  
Danielle Urban

**In Attendance**

Deborah Beatty  
Ellen Welner

**Judicial Advisors**

Judge Thomas McNamara  
Judge Joseph Rosania

**ITEMS**

1. Vote on approval of minutes from meeting held on February 12, 2019.
  - a. Steve Nichols moves, Bonnie Bell Bond seconds, approved
2. Report of Committee Chair.
  - a. Ted Hartl: Other than the proposed L.B.R. 2016-3(b)(3) and the L.B.R. 4003-2 there are no other issues pressing.
3. Report of Judicial Advisors.

- a. Judge McNamara:
    - i. Advised the committee of the changes in District Court make up with death of District Court Judge Wiley.
  - b. Judge Rosania
    - i. Advised the committee that the numbers of discovery disputes are reduced and more efficient and thus the current rules seem to be working.
    - ii. By-product is limited sanctions due to timely resolution.
4. Reports of Active Subcommittees: N/A
5. Pending Committee Matters:
- a. L.B.R. 2016-3(b)(3) Proposed Technical Changes (draft attached);
    - i. Tara Salinas:
      - 1. Added three clauses qualifying non-governmental bar dates to L.B.R. 2016-3(b)(3) to the service requirement for Long Form Fee Applications.
    - ii. Bonnie Bell Bond:
      - 1. Explained the purpose of the bar date and summarized changes for committee.
    - iii. Judge Rosania
      - 1. Stated that there is a check box on the local plan for fees to pursue and the importance for practitioners to check the appropriate box.
      - 2. Reiterated that process matters and rules have a purpose.
      - 3. Also Chapter 13 Trustee reliance on plan and appropriate check box.
    - iv. Doug Kiel:
      - 1. Stated at a later time it may be important to add additional verbiage into rule at later date regarding if Debtor's counsel elects the presumptive fee or will be filing a long form fee application. However, at this time it may be best to wait and see.
    - v. Bonnie Bell Bond:
      - 1. Stated to the committee that one could always file a new plan with correct box checked if change in decision was made by the practitioner regarding the presumptive fee.
    - vi. Ted Hartl:

1. Asked sought guidance on timing to tender revisions to District Court.
- vii. Judge McNamara:
1. Indicated that deadline is June to tender rules to District Court so that rules can become effective Dec 1.
- viii. Bonnie Bell Bond: moves Steven Mulligan seconds. Approved.
- b. L.B.R. 4003-2 (motions to avoid judicial liens) and L.B.F. 3015-1.1 (Chapter 13 plan), both of which require separate motion *versus* Fed. R. Bankr. P. 3015.1 and Fed. R. Bankr. P. 4003(d), both of which contemplate judicial lien avoidance in the plan. Issue of service – *In re Rupp*, Case No. 18-19041 EEB.
- i. Ted Hartl:
    1. Cited Judge Brown’s Case, *In re Rupp*, Case No. 18-19041 EEB which she allowed liens to be done within plan as it is consistent with new national rule despite contrary to our local rule.
    2. Our local rule and local form plan says separate motion and notice is necessary.
  - ii. Judge Rosania:
    1. Express being worried about creditor notice within plan if the lien avoidance is buried within a lengthy plan.
  - iii. Ellen Welner:
    1. Stated that the Motion to Avoid Lien has always been separate in our district.
    2. She is worried about practical aspects of not having a separate motion and a separate order.
    3. She stated this will cause a lot of confusion with Colorado title companies.
  - iv. Judge Rosania:
    1. Expressed importance in providing proper notice and service to comply with Rule 7014
  - v. Michael Suchoparek:

1. Expressed the efficiency and ease of current local rule and that having a reception number relating to a lien within a separate order is important.
  2. Also limits former clients, Realtors, and title companies coming back to former counsel to obtain comfort orders regarding judgment liens.
- vi. Ted Hartl:
1. Question for committee is that does the federal rule trump our local rule?
- vii. Judge McNamara:
1. Stated rules are not necessarily in conflict. If Debtors really want to challenge and try their luck they can do it within the plan and thus rules are not really in conflict.
- viii. Ross Hoogerhyde:
1. States that notice is important for efficiency to have done by motion. Serious notice issue for the IRS with the amount of cases they manage and by Debtors trying to avoid purported statutory liens.
- ix. Adam Goodman:
1. States that service of a plan avoiding a lien is most likely bad for FDIC creditors and Debtors should not rely on BNC.
  2. National plan has different language than local plan and if we go this route then we may need to adjust language in our local form plan.
- x. Tara Salinas:
1. Our local plan does not have instruction paragraph as required by local rule.
- xi. Steve Nichols:
1. Pointed out that our Form Plan paragraph 1.4 does have the requirements met.
- xii. Ted Hartl:
1. Let judges deal with it on case by case basis.

c. Student Loan Issues Peculating

i. Ted Hartl:

1. Stated to committee that there is an increase on creative strategies trying to discharge student loans within the bar.

ii. Tara Salinas:

1. Trend is seeing more hardships being filed in base bankruptcies to try and discharge.

d. Claims Issues:

i. Rule 3004 issues:

1. Doug Kiel:

- a. Stresses how important to file claim pursuant to 3004 if material claim is not timely filed.
- b. Stated this is a huge malpractice trap for Debtor's bar.

e. Stale Proof of Claim Filings.

i. Adam Goodman:

1. Is seeing a problem with Stale Claims being filed in cases.

f. Next Gen ECF / PACER update

i. Ken Gardner

1. Mentioned Next Gen and suggested double check log in problem prior to June 20<sup>th</sup>.

ii. Deborah Beatty

1. Every attorney needs to have own ECF account.

g. Comment Period on Rules:

i. Ted Hartl:

1. Comment period should run end of July and August would be a pro forma meeting

6. Inactive or Miscellaneous Committee Matters: N/A

i. Ted Hartl:

1. Proposed next meeting time for Tuesday August 13, 2019 at 12:00PM
7. Scheduling Next Meeting of the Committee.
  - a. Committed agreed Next Meeting - Tuesday August 13, 2019 at 12:00PM
8. Adjourn.