

MINUTES OF MEETING OF
STANDING LOCAL BANKRUPTCY RULES REVISION COMMITTEE
DISTRICT OF COLORADO, BANKRUPTCY COURT
March 9, 2021

A regular meeting of the Standing Local Bankruptcy Rules Revision Committee was called to order at 12:02 on Tuesday, March 9, 2021, by Chair Ted Hartl.

Attendance: The following Members, Ex-Officio Members and Judicial Advisors attended by phone or a Zoom conference call:

Members

Ted Hartl, Chair
Bonnie Bell Bond, Whip
Joli Lofstedt
Steven Mulligan
Tara Salinas
Michael Suchoparek, Secretary
Thomas Vincent

Ex-Officio Members

Jennifer Cruseturner, Vice Chair
Kenneth Gardner
Adam Goodman
Paul Moss
Margaret Muff
Nicholas Santarelli
Laura Guice
Deanna Westfall
Matt Hoelscher

Judicial Advisors

Judge Thomas McNamara
Judge Joseph Rosania

1. Vote on approval of minutes from meetings held on May 14, 2019
 - (a) Steve Milligan moves, Tara Salinas seconds, approved
2. Report of Committee Chair
 - (a) Ted Hartl:
 - i. Committee has not been as active due to limited legal issues and COVID

- ii. Email any issues or topics for future discussion.
- iii. Local counsel requirements for local rules was declined by District Court

3. Report of Judicial Advisors

(a) Judge McNamara

- i. Status of local rules
 - 1. LBR 2016-3(b)–waiting on sending off to District Court due to minor change.
 - 2. However, no other proposals to accompany this minor rule change at this time.
- ii. Daily workings of Bankruptcy Court
 - 1. Stated appreciation for administration to keep Court open over past year and the accommodation of everyone.
 - 2. Case filing numbers: Much lower than expected or anticipated but numbers may go up in the near future.
 - 3. Federal *Pro Se* Clinic –extending to Bankruptcy Court and should soft launch in the next few months.

(b) Judge Rosania

- i. Local Counsel Rule – Maybe try again if there is a different judicial advisor.
- ii. New term law clerk and temporary clerk hired due to Steve Nichols being out.
- iii. Would like to keep committee alive for future purposes.
- iv. May need rule drafted regarding mediation.
- v. May need rule drafted for Subchapter 5 plans.

(c) Ken Gardner – Clerk of the Court

- i. Should not anticipate “normal” operations within 2021
- ii. Court will revisit operations in Fall 2021.
- iii. Some judges may allow for in person trials again soon.

(d) Ted Hartl

- i. Questions on *Pro Se* Clinic
 - 1. Judge McNamara
 - a. Discussed history of evolution of *Pro Se* clinic in District Court.
 - b. There will be a separate program from the District Court program within the Bankruptcy Court.
 - c. May be done by referrals from Clerk's office
 - d. *Pro se* filings have decreased by percentage of filings.
 - 2. Ken Gardner
 - a. It is actually facilitated by CBA with a limited scope agreement and not by clerk's office.
 - b. Soft opening is this week with part-time attorney staffing it.
- 4. Reports of Active Subcommittees: N/A
- 5. Pending Committee Matters:
 - (a) Ted 2016-3 Nothing committee needs to do on this rule at this time.
 - (b) Rule 4003-2: Can you avoid in plan or do by motion?
 - i. Jennifer Cruseturner
 - 1. Judge Brown allows one to avoid lien within Chapter 13 plans but has the same service requirements per the Rules. No motion is needed with her chambers.
 - ii. Judge McNamara – Seemed to be divergence of views.
 - 1. No need to change rule as at this time.
 - (c) Electronic Signatures
 - i. Tara Salinas
 - 1. Would like the Court to review wet signatures as it is causing delays in offices.
 - 2. Also, many clients don't have mailing stamps on hand.

3. Maybe more than /s/ signature but actual digital signature that is compliant with federal law.
 4. Maybe local rule should be amended or a GPO issued for a period of time on a trial basis.
- ii. Judge McNamara
 1. Judges circulated proposed language to other key players.
 2. Comments came back that suggested wet signatures are still necessary but open to discuss again.
 - iii. Paul Moss
 1. UST discussed that they would prefer wet signatures
 - iv. Ken Gardner
 1. National Rules leave it open if they are allowed by not being expressly approved.
 2. We also could do a GPO for digital E signatures.
 - v. Steven Milligan
 1. We have local rules on the topic
 2. LBR 9011 needs to be amended as well as LBR 5005.
 - vi. Michael Suchoparek
 1. Suggested revising subject to align a Local Rule with the Federal E-Sign Act and the Uniform Electronic Transactions Act.
 - vii. Ted Hartl
 1. Suggests looking again at the wet signature issue.
 2. Tara Salinas and Ted Hartl will circulate drafts of proposed language.
- (d) Non E-Filers can file POC in case
- i. Ted Hartl
 1. Proposed amendments to local forms

2. Rule change is not needed
 - ii. Tara Salina submitted motion for approve. Bonnie Bell Bond Seconds.
 - iii. Judge McNamara
 1. Will report to other judges that amendment is approved.
- (e) Chapter 13 Fees
- i. Tara Salinas
 1. Suggested raising Presumptive Fee
 2. Proposed \$4,500 from \$4,100.
 3. Keep expenses the same.
 - ii. Adam Goodman, Trustee
 1. No opposition for fees increase to \$4,500
 - iii. Michael Suchoparek
 1. Agrees with Tara Salinas about no look fees increasing due to increased hours put into cases on average
 - iv. Tara Salinas
 1. \$4,500 plus \$200 should be considered
 2. Tara Salinas offers Motion. Bonnie Bell Bond approved. Submitted to judges
- (f) Auto Stay Turnover Supreme Court decision regarding section 542
- i. Ted Hartl
 1. Having to file AP is slow and costly.
 - ii. Ken Gardner
 1. Sent out survey to bankruptcy Court for turnover process.
 2. National Rules committee will be taking it up in the next few weeks.
- (g) Subchapter V Cases

- i. Ted Hartl
 - 1. Should our rules committee draft a local plan?
 - 2. Ted Hartl will discuss with Joli Loftsted.
 - ii. Paul Moss
 - 1. Four of his five cases right now are using national plan and asserts the national plan works and there is not a pressing need.
- (h) Mediation Rule
- i. Judge Rosania
 - 1. Thought we had a draft of mediation rule.
 - ii. Steven Mulligan
 - 1. Last time it was looked at it was decided not to recommend changes to the Rules but maybe time to revisit.
- (i) Local Counsel Requirement
- i. Ted Hartl
 - 1. Survey of all other circuits of their rules and local rules.
 - 2. Local counsel is still required in 10th Circuit
 - ii. Michael Suchoparek
 - 1. Sees many out of state attorneys in Chapter 7 cases.
 - iii. Judge McNamara
 - 1. Maybe revisit the proposal from 2016.
- (j) Need for committee work.
- i. Ted Hartl.
 - 1. Schedule Meeting for the next few months.
 - 2. Will take Nick Santerelli off committee list as he now works for the Trustee Office
 - ii. Jenn Cruseturner

1. Proposed May 2021 for next meeting.

(k) Next Meeting May 4th 2021 at Noon.

(l) Adjourn