

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

A regular meeting of the Standing Local Bankruptcy Rules Revision Committee was called to order at 12:03PM on Tuesday, June 18, 2024, 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
Michael Suchoparek, Vice-Chair
Tara Salinas, Secretary
Thomas Arany
Bonnie Bell Bond, Whip
Steven Mulligan
Morgan Stanley

Judicial Advisors

Judge Romero
Judge Tyson

Ex-Officio Members

Samuel Boughner
Ken Gardner
Greg Garvin
Adam Goodman
Laura Guice
Doug Kiel
Margaret Muff
Steve Nichols
Trish Turner
TJ Vincent
Deanna Westfall

Items

1. Vote on approval of minutes from last meeting held on March 12, 2024.
 - (a) Judge Tyson moves to approve. Tara Salinas seconds, Approved.
2. Report of Committee Chair.
 - (a) Nice to see everyone at Vail for ABI. Little discussion at the conference pertinent to the local rules, so we will dive into the meeting.
3. Report of Judicial Advisors, Judge Tyson.
 - (a) Only what is already on the agenda.
4. Pending and New Committee Matters:
 - (a) **E-signatures; ad hoc canvas and report on other districts.** Michael Suchoparek reported that the committee canvased every district to determine what the current status of wet vs. digital signature rules are across the country. Approximately 1/3 of districts have a rule allowing either digital copies of wet signatures, or electronic signatures using commercial software. He stressed the

importance of this rule due to the number of documents that need signature and practicality of such a rule for debtors and counsel.

Tom Arany suggested we follow the rule adopted in the Eastern District of Wisconsin as we have the same US Trustee, the provision drafted makes an amendment to 9011-4 that required the use of PDF signatures from audit logs for the two-year period.

Sam Boughner said he has been working on this and is appreciative of the committee's work. He has been working with the US Attorneys' office and they have created a few drafts that the USAO is reviewing to get approval to move forward with some sort of a rule similar to what is being proposed. Changes will be to narrow the specifics of the security features of the software need to be and what the audit trail needs to consist of and whether that should be filed with the Document so the audit trail can be shown. Hope to be able to submit that to the committee soon. While there is nothing to present today, we are on track to have something to propose soon so we can move forward with this.

Ted Hartl stated it would be great to get some consensus among the committee before passing along to the Judges for consideration. Ken Gardner asked that the burden not be put on the Clerk's office to make sure the correct software was used to affix the signature. Judge Tyson suggested that perhaps this is something the Trustee can check at the meeting of creditors. Ken Gardner wants to have this be generic as possible so that as the technology moves forward the burden doesn't fall on the clerk's office to reject documents if they are not done correctly. His job is to accept what is filed and ask the Judges to determine whether there is an error. Judge Tyson indicated that the budget is not sufficient to allow for this to be monitored and determined at the Court level, that is reason for suggesting the Trustee's check. Adam Goodman stated that the Trustees already confirm that debtors' counsel have the signature.

Judge Tyson asked whether there was a similar rule at the District Court level. Steven Mulligan asked whether we have the audit trail attached to other documents that are submitted to the Trustee in advance of the 341 meeting.

Ted Hartl suggested we table and then come back around.

- (b) **Proposed amendment to L.B.F. 1009-1.1 re: amendments to schedules.** Tara Salinas proposed a form change and mentioned that there is a desire to strike 1009-1(c)(1) to serve amended schedules. Laura Guice said the Clerk's office agrees that there is a need for substantive changes to the rule. Jared Walters asked whether we could designate the "Other" needs to specify the title of the document. Sam Boughner requested that the change the instructions from highlighted and underlined or otherwise clearly indicated. Tom Arany and Adam Goodman suggested we track the language in 3015-1(d)(2)(A).

Jared Walters moved to approve and Michael Sucoparek seconded. The change was approved.

- (c) **Potential amendment to L.B.R. 9010-1(b) re: Colorado admission or local counsel enforcement.** Ted Hartl mentioned that there is a bit of difficulty between the bankruptcy court and the district court and questioned how big of a problem is this and whether it needs to be discussed. Ted's recollection was that the last time we tried the district court told the bar "tough luck." Judge Tyson agreed that "we got smacked down pretty hard last time." Ted indicated that we would need to show the need before approaching the district court again.
- (d) **Potential revisions to L.B.R. 2002-1 and L.B.R. 5005-1 and 9001-1 re: effect of entering bad data in creditor's matrices and/or e-proofs of claim.** Laura Guice indicated that the Clerk's office is trying to clean up some bad data that creditors are putting into the system. This is an issue of this is an issue of e-agents who are filing claimants in the system and are putting payment addresses all over which populates the matrix with those addresses. Issue is we are serving documents to the payment address rather than the notice address. The Clerk's office has fixed this going forward and there are a fair number of these that will result in the service of documents on the wrong address and then getting a deficiency notice from chambers.

Initial review at the Bench Bar last year showed support this change and that is the reason for the change – asking that the burden for correction be placed on the e-claimants. This would be in Subpart D or E in 2002-1 – the substantive changes are all available in one spot.

Michael Suchoparek, Tara Salinas indicated this was an urgent issue that needed to be addressed sooner rather than later. Judge Tyson mentioned that the earliest the rule change would go into effect would be 2025 – perhaps we could consider a GPO. Laura noted that if the court would consider a GPO it would be helpful as this is a significant issue. Laura Guice also stated that the rest of the substantive issues may not be as urgent. The other significant issue that needs addressing earlier is the iFile system – and changing that to "submission" for the pro se litigants.

Adam Goodman questions about whether the changes to 2002(g)(1)(A), to be sure the local rule doesn't go against the federal rules. Laura Guice said that unfortunately the rules don't mirror the ECF system and how it is created. Lots of different issues and the e-filing system is making it worse. Ken Gardner said that we should at least get this into the hands of the judges so that they can consider a possible GPO and then we can have some history of whether this fixes the issues and what additional changes need to be made when the actual rule to be effective December 2025 is proposed.

Ted Hartl requested that everyone review the redlines of the substantive changes so that we can give a vote yea or nay.

- (e) **Federal Rules of Bankruptcy Procedure overhaul/restyling and conforming L.B.R. updates.** Laura Guice explained that the Clerk's office made the 1000-2000 series rules, but you will see the conforming changes as through all series –

no real guide from the committee about what should be done. Some rules were not adjusted as it would have resulted in the substantive changes. Ted Hartl recommended we take this first chunk and come back after doing some homework in the fall to see whether we are going to get them done. Judge Tyson suggested we work through these in chunks as that will make it easier to handle for our judges. Tara Salinas asked what the time frame would be afterwards, to ensure we set our timing appropriately. Judge Tyson agreed that working through the chunks now would be good to ensure we meet the timeframe needed.

Ted Hartl suggested that maybe we can see the revisions in advance of the meeting. Laura Guice offered to create a one-page summary of the changes. Judge Tyson said that we could get the notice issue addressed within 30 days so that it can come back around for a GPO sooner rather than later.

- (f) **Potential revision to L.B.R. 2081-3 re: conversion to or from Sub V in chapter 11 cases.** Ted Hartl asked whether there is any pressing need to make this change. There was no response, so the issue was tabled.

5. Miscellaneous and Potential Committee Matters:

- (a) Open for comments.

Scheduling Next Meeting. Suggested that we schedule in September or October and Laura Guice would send over as many of the stylistic changes as possible so that we can discuss at the meeting in September/October. Jared Walters asked whether it would be helpful to have some feedback on the stylistic issues in the net 30 days. Ken Gardner stated that the Clerk's office would try to get everything out by the end of the year but will take the May deadline and overdeliver.

OCTOBER 8, 2024 at 12:00 pm -

6. Adjourn. 1:16pm.

Ted Hartl noted that the bulk of the revisions are re-wording or restyling the rules to plain English. As a committee, do we want to or need to make changes to our local rules? It might be helpful to do a full review of the rules and clean-up to make them "walk and talk" like the federal rules.

Ken Gardner provided an overview of the changes and the process that the National Bankruptcy Rules Committee went through. Over the past few years, this was done in sections. In theory, there are no substantive changes. He suggested we make our local rules symmetrical and try not to make substantive changes but acknowledged that some substantive changes may arise.

Ted Hartl agreed that we want our local rules to have symmetry with the Federal Rules.

Laura Guice commented on the 2017 revision cycle and the role the clerk's office played. She stated that the clerk's office is happy to continue to drive this and provide the committee with suggested changes for their comment. The clerk's office has already been through the first 10 pages of the local rules and where there are stylistic questions the office can either run with it or take direction from the committee. Ted mentioned that since the committee serves at the pleasure of the Court, we will follow our judges' lead.

Judge Tyson said, which she can't speak for everyone, it is definitely helpful to have the local rules track the federal rule. Making the rules easier to understand for laymen certainly improves access to justice and that was one of the motivations of the changes.

Judge Romero asked whether this was the final version of the national rules, and Ken confirmed that it likely is. Ken said the committee tackled the revisions in sections, 1000-3000, then 4000-6000, and finally the 7000-9000 rules. The national committee worked with professors who also worked on the other federal rules.

Judge Romero also asked how much effort would be necessary to make the local rules consistent with the federal rules. Ken responded that there was some substantial work involved. Laura Guice stated that it will take time, but that is the job of the Clerk's office. We could wait until the rules are effective, but the clerk's office will be "at your service".

Ted Hartl asked about the timing of making changes that would be effective 12/1/2024. Judge Tyson responded that in order to get approval by the District Court, we would probably need to submit the proposed changes by May or June of 2024 to allow for comment by September. Ted stated that we could start the project without an intent to finish it by June, and once it is finished we can submit to the District Court, likely for implementation in 2025.

Ken and Laura favored not putting too much time pressure and allowing the clerk's office and the committee to work through the rules with a more measured approach. The rules can be reviewed on a rolling basis, chunking them into sections and attacking it over time. Judge Tyson agreed that a more measured approach was best.

Ted Hartl indicated that we can also address any substantive issues that arise as we go. Judge Tyson stated that if we can get the proposed rules to the District court by May 2025, we would be on track for implementation in December 2025.

- (a) Additional proposed rules revisions/considerations based on Clerk's Office feedback

- (i) Local Rule requiring Motions to Convert to and From Sub V to increase consistency in noticing, deadlines, and hearings.

Samuel Boughner asked how common this is, only when debtor is moving from Sub V or also when the Trustee is requesting the move? Laura Guice said it isn't that common, but notices are inconsistent and lots of behind-the-scenes minutia is necessary to get it coordinated. A local rule could create more consistency. Samuel mentioned that this would really only be for when the debtor is requesting the move. Greg Garvin asked how motions practice being included will affect the satisfaction of the timing of the deadlines.

Ted Hartl suggested we could include in the 2081-3 rule. Laura stated that while this is not a common issue, there aren't any guardrails to ensure the process stays on track. A rule would allow some guides to be in place. Margaret Muff added that the rule would help to ensure deadlines are correct and set appropriately.

Samuel Boughner asked whether a Notice would provide the same protections/assistance. Laura said it would. Samuel suggested it might be helpful, and the US Trustee was not opposed, maybe it would be a good idea to poll debtors' counsel.

Laura Guice said she would dig around to see if other districts have any rules in place to address this. Ted asked how this would be impacted by the *In re Signia* decision, what options should be considered?

- (ii) Amendments to Rule 1009-1.1 – Laura Guice mentioned that the Clerk's office gets a lot of feedback that the form 1009-1.1 is cumbersome. Tara Salinas suggested maybe we could change the form to reduce the size and only indicate what has changed. Tom Arany suggested that since schedules are supposed to be highlighted to show the changes, maybe the form could use that. Tara will take a crack at a revised form.
- (iii) Consider revisions to L.B.R. 2002-1 and LBR 5005-1 and 9001-1 to put the burden of bad data in the creditor's matrices on those who enter the data, usually e-claimants. For example, L.B.R. 2002-1 may be revised to include a new subpart:

Claims Register: Addresses entered by an electronic filer when filing a proof of claim populate the Creditor Address Mailing Matrix. The address entered into the Court's CM/ECF system will be used for service and notice and constitute the notice address pursuant to Fed. R. Bank. R. 2002(g)(1)(A) unless a change of address is filed later.

Ted Hartl introduced the proposed language as a means of shifting the burden for bad dated to the data entry source. Laura mentioned we would need to get this amended to add to 2002-1 sub (d) and make 5005-1 and 9001-1 conform. Laura will work on a draft to present at the next meeting.

7. Miscellaneous and Potential Committee Matters:
 - (a) Request for a local rule that addresses requirement to be licensed in Colorado in order to practice in the bankruptcy court. Tara Salinas mentioned that the District Court declined the provision submitted in 2018 that would require the same. Ted Hartl indicated that maybe their position had changed and we could propose a change again. Agreed to add to the agenda for June meeting.
8. Scheduling Next Meeting. Next meeting scheduled for Tuesday, June 18, 2024 at 12:00 pm via Zoom.
9. Adjourn. The meeting was adjourned at 1:12 pm.