

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO  
Local Rules Advisory Committee Meeting  
Friday, August 22, 2003

**Minutes**

**1. Attendees:**

Ron Andazola  
Jim Askew  
Karen Bradley  
Jim Burke  
Margaret Grammer Gay  
Karla K. Poe  
Kelley Skehen  
Doug Vadnais

**2. Discussion:**

- (A) 9006-2: Like it. Aren't there some things under the Code and case law where this is not possible – where the requirement for entry of an order exists. Concern at people filing such motions but not acting on them, following through on getting an order or a hearing on objections – lack of good faith. More of a bad practice issue (e.g., motion still pending two months later where objects of extension request have already been filed).

Might want to see a rule which limits the length of the extension but makes it automatic for  $x$  number of days, perhaps up to  $y$  number of days before 341 meeting. For situations like an extension of time to file an objection to a disclosure statement, such an automatic extension might gum up all the works.

523/727: What if motion denied? Running a risk. This rule would truly impact those. Perhaps might exclude certain things, like motions to assume an executory contract.

Concern about unintended consequences. Current practice works well. Best to do nothing.  
**Vote no.**

- (B) 9010-1: (ND CA) Subsection (a) already covered by our rule. **Should amend our rule to add “limited liability corporation”? Perhaps could say “any entity other than a natural person.” Code uses the term “individual.” Agreed. (NMLBR 9010-2)** Subsection (b) unnecessary. Subsection (c) includes reaffirmation agreements – **we should amend our current local rule to include these as well. Agreed.** Discussion of subsection (c) provisions re applications for compensation – burdensome for some entities, like a storage facility. Should the attorney for the employing entity be responsible? Might establish a dollar limit? Or could just object on a case-by case basis? Leave out of list of exceptions. If filed without a lawyer, UST can object.

- (C) 9010(e) (DC): Question addressed to some extent in discussion of withdrawal of attorneys. Concern about requiring attorney to represent debtor in adversary proceeding where debtor had not revealed potential 727 matters to the attorney. Shouldn't try to rope the attorney in. Should the rule be clear that if you file the petition it is definitely not for adversary proceedings. Good practice addresses these issues in retainer agreements. Some Q as to whether debtors actually discuss these matters (or would it be that the debtor may not have even met with the attorney). Perhaps we need a reverse of this rule. Should be required to represent for common, ordinary, "part and parcel" of a case matters. On the other hand, the attorney should be able to contract for what they want to, what they agree to. But debtors may not understand how these decisions really affect them. Kelley recollects a case which would not allow that kind of piecemeal approach – rendering agreement ineffective. Jim B. thinks that Judge S. believes that unless you have specifically agreed not to do something, the lawyer is in for the whole case.

What would reasonably be carved out of a chapter 7 case? Qs about who counsel contacts, particularly in response to debtor's call, as in Karen's experience. NMLBR 9011-2 provides that debtor represented by an attorney can't file things or appear pro se. Trustees and attorneys would be forced to deal with "sort of" pro se debtors. Could make it an "unless otherwise ordered by the court" provision. Uncomfortable with restrictions on ability to contract. But, have a need to protect the system. Would definitely want to require service of notice of entry of this order on creditors. May also want to require that the debtor be present at the hearing (at least on the phone).

**Leave it alone – keep current 9011-2.** Kelley would sure like to have something specific for 13s and will consider drafting a proposal. **May need to change the wording of 9011-2 to make it an obligation of the attorney and not on the pro se debtor.**

### 3. Next Meeting:

The next meeting will be on Friday, September 19, 2003, at 12:00 noon, in Judge Starzynski's hearing room (NW corner 13<sup>th</sup> floor), Dennis Chavez Federal Building and United States Courthouse, 500 Gold Avenue SW. Next meeting after that, back on track, to 4<sup>th</sup> Friday, which will be the 26<sup>th</sup>.

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