



Published on *United States Bankruptcy Court* (<http://www.canb.uscourts.gov>)

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Revised:

Thursday, February 16, 2012

PRACTICES AND PROCEDURES IN JUDGE EFREMSKY'S COURT
[revised 3/5/2015]

In addition to enforcing the Bankruptcy Local Rules for the Northern District of California ("B.L.R.") and the Federal Rules of Bankruptcy Procedure ("Rules"), Judge Efremsky has established certain practices and procedures in his court. Counsel and litigants appearing before Judge Efremsky should be aware of the following:

I. GENERAL PROCEDURES

A. Calendaring Matters

Judge Efremsky uses an "open calendar" procedure explained in the Open Calendar Procedures in Judge Efremsky's calendar section on the Court's website. Parties or counsel may also calendar matters by contacting Monica Burley, Courtroom Deputy, at 510.879-3541 or e-mail to monica_burley@canb.uscourts.gov.

B. Communications With Chambers' Staff

Rule 9003(a) prohibits ex parte communications with the court concerning matters affecting a particular case or proceeding. Rule 5-300(C) of the California Rules of Professional Conduct specifies that for disciplinary purposes, a contact with Judge Efremsky's law clerks constitutes a contact with the judge. No attorney or party may initiate contact with the judge or his law clerks in violation of Rule 9003(a). Improper ex parte communications may include letters or e-mails to the court (especially where copies have not been provided to opposing parties and the [United States Trustee](#)) and telephone calls to the court. Individual cases may not be discussed with Judge Efremsky's law clerks except to inform the court that an ex parte request or a form of order is opposed, that an emergency pleading or request for order shortening time is being submitted, that a [Chapter 11 plan](#) proponent intends to go forward with a [disclosure statement](#) or [confirmation](#) hearing, or that a calendared matter has been settled or is being re-scheduled. In the event of a settlement or re-scheduling, counsel should also contact the judge's courtroom deputy.

To check on the status of an order, counsel should check CM/ECF or PACER. To find out how to utilize PACER, go to the Pacer Service Center website at <http://pacer.psc.uscourts.gov/>. If the proposed order has not been entered on the docket after seven to ten days, or if there is an urgent need for the order, counsel may contact the clerk's office.

E-mail should not be sent to Judge Efremsky, or his law clerks without prior approval.

C. Compliance With Local Rules

Counsel and parties should comply with all local rules. In particular, in order to avoid delays in the processing of orders, parties should comply with B.L.R. 9014-1(b)(4) (when requesting entry of order by default) and B.L.R. 9022-1 (when relief is sought against a particular person or entity that has not stipulated to the relief). See section II. C entitled "Submission of Orders."

D. Obtaining Continuances

Trials: Judge Efremsky will grant continuances of trials for good cause only, even when the parties stipulate to a continuance. A request for continuance must be made by noticed motion or by a written stipulation stating the reason for the requested continuance. Parties requesting a continuance of a trial should comply with B.L.R. 9006-1.

Motions: If parties agree to continue a scheduled hearing on a motion, they must contact the judge's courtroom deputy to inform her of the new date and time and file and serve a notice of continuance. No written stipulation is necessary. A party requesting a continuance that is opposed should comply with B.L.R. 9006-1.

E. Discovery Disputes

Judge Efremsky will generally hold a telephonic conference to resolve a discovery dispute in lieu of formal motions to compel or quash discovery. (See B.L.R. 1001-2(a) and Civ. L.R. 37-1(a) and (b)). Parties should comply with the procedures set forth in Civ. L.R. 37-1. To schedule a telephonic conference regarding a discovery dispute, counsel should contact the judge's courtroom deputy. Any request for sanctions relating to a discovery dispute must be made by separate noticed motion.

II. OTHER PRACTICES AND PROCEDURES

A. Obtaining an Order Shortening Time

A party seeking an order shortening time must comply with B.L.R. 9006-1. A request for an order shortening time should be made in writing. In particular, the party must submit a declaration describing the efforts made to obtain the consent of the opposing party to the order shortening time. In general, Judge Efremsky will not require the opposing party to file any written response to a motion that is scheduled on shortened time, and opposition may be presented at the hearing.

Judge Efremsky does not require an order shortening time on a motion for interim authority to use cash collateral or obtain credit (including DIP financing). See Rule 4001(b)(2) and (c)(2) (hearing may be conducted within 14 days after service of motion to avoid immediate and irreparable harm to estate pending final hearing). To obtain a date and time for the initial hearing on a motion to use cash collateral or obtain credit, counsel should contact the judge's courtroom deputy.

B. Procedures for Temporary Restraining Orders (TRO)

Judge Efremsky generally prefers at least 72 hours' notice to, and service of moving papers upon, opposing parties. Any request for a TRO (or other injunctive relief) requires an [adversary proceeding](#). See Rule 7001(7). Accordingly, a complaint must be filed prior to the hearing. To obtain a date and time for a hearing on a request for a TRO, counsel should contact the judge's courtroom deputy.

C. Submission of Orders

Uploaded orders should be converted, not scanned.

**Please allow at least 3 business days after submission before inquiring about the status of an order.

Judge Efremsky frequently receives proposed orders from parties who have not complied with B.L.R. 9021-1 and 9022-1. The following addresses common errors, and is not a substitute for reading the rules.

A proposed order submitted after a hearing should contain the signatures of any other counsel who appeared at the hearing, approving it as to form. Otherwise, the submitting party should file a proof of service evidencing service of the proposed order on all such counsel. Orders not approved as to form will ordinarily be lodged for 7 days after service, but this is not a guarantee that they will be held for that period.

Those parties not using CM/ECF should provide copies, stamped and addressed envelopes (including a return envelope), a list of parties to be served, and a form of notice of entry of order for the clerk to use. Those parties using CM/ECF should submit orders or judgments with a service list of persons and entities to whom service is required by B.L.R. 9022-1.

Parties are frequently uncertain as to who must be served. Under Rule 9022 and B.L.R. 9022-1, notice of entry of orders or judgments must be served by the clerk on all "contesting parties" and the United States Trustee (and such other parties as the court directs). Judge Efremsky interprets "contesting parties" to mean (1) any identified, named party against whom relief is sought (including the [debtor](#)(s) and debtor(s) counsel for all orders in response to motions for relief from the [automatic stay](#)) unless that party (a) has stipulated in writing or in open court to the relief sought (not just the more traditional "approved as to form"); or (b) was present when the order or judgment was signed in open court, and (2) to the extent relief is sought on notice to creditors generally, only those creditors who file a written objection or request for a hearing, or who appear at the hearing and object to the relief sought, unless such written or oral opposition has been expressly withdrawn. Other parties need not be served.

III. SPECIFIC MOTIONS AND ORDERS

A. Default Judgments in Adversary Proceedings

When requesting a default judgment in an adversary proceeding, the moving party must submit a proof of service showing that the request was served on the non-responding [defendant](#). When submitting either a proposed default judgment or a proposed judgment pursuant to a stipulation that relates to the nondischargeability of a credit card debt, in addition to all other documents submitted to the court in support of the judgment, the moving party must submit copies of the credit card statements originally sent to the debtor for the time period at issue in the underlying complaint as well as one year prior to that time period. Appropriate redactions of private information must be made. These statements should be attached as an exhibit to a declaration by a party competent to testify that such statements are true and correct copies of the records in question.

In certain matters, determined on a case-by-case basis, the court may require that the [plaintiff](#) seeking a default judgment schedule a "prove-up" hearing (see Fed. R. Civ. P. 55(b)(2) and Rule 7055) and serve notice of the hearing on the defendant at least fourteen days prior to the hearing. At such hearing, any witnesses for the plaintiff must appear personally; the defaulting defendant is entitled to cross-examine the witness but is not permitted to present its own evidence or witnesses.

B. Orders Retaining Professionals

Retention orders must include all material terms of the professional's employment, including whether the employment is under 11 U.S.C. § 327 or § 1103; the date employment is effective; the basis of compensation. If the provisions of 11 U.S.C. § 328(a) limiting review of compensation are applicable, this must be clearly stated. Any proposed success fees or other back-end fees must be clearly described. Any limitation on the professionals' liability such as indemnification provisions, procedural limitations, [claim](#) limitations, damage limitations must be clearly described and, if such provisions are intended to bind successors and assigns, this must be clearly stated. Material terms of employment not set forth in the order are not included in the court's approval.

C. Motions to Avoid Judgment Liens that Impair an Exemption

In order to obtain an order avoiding a judgment [lien](#) under 11 U.S.C. § 522(f)(1)(A), the moving party must file a declaration from the debtor or some other appropriate offer of proof setting forth the grounds for avoiding the lien. In particular, the declarant(s) should provide the following information: the value of the encumbered property, the amount and nature of the debtor's exemption, the extent of the impairment, and the amount of the judgment lien and all other liens encumbering the property (see 11 U.S.C. § 522(f)(2)(A)). The moving party should also disclose any other facts supporting the contention that 11 U.S.C. § 522(f)(1) is applicable.

The moving party should also ensure that service of the motion complies with Rule 7004 and Rule 9014(b). See [Beneficial Cal., Inc. v. Villar \(In re Villar\)](#), 317 B.R. 88 (9th Cir. BAP 2004).

D. Motions to Sell Free and Clear of Liens to Value Secured Claims, or to Assume or Assign Executory Contracts or Leases

Parties filing motions to sell property of the estate, motions to sell free and clear of liens, motions to value secured claims, or motions to assume or assign executory contracts or leases must comply with B.L.R. 6004 1 or 6006 1 and with this court's Guidelines Re Sale Orders, available on the court's website.

Judge Efremsky expects counsel to comply with Rule 6006, dealing with omnibus motions to assume and reject executory contracts and leases.

E. Sale Motions; Section 363(m) Good Faith Determinations

Burden of Proof; Discretionary Finding: Any bidder requesting a judicial determination under 11 U.S.C. § 363(m) that its purchase of assets is in good faith (in an order authorizing a sale under § 363(b) or by separate order) has the burden to establish such good faith. This court has discretion to refuse to make such a finding, and the preclusive effect of such a finding may be limited. [T.C. Investors v. Joseph \(In re M Capital Corp.\)](#), 290 B.R. 743, 748-49 (9th Cir. BAP 2003).

Evidentiary Support: A bidder seeking a §363 good faith determination must file a written declaration (or, if the bidder is not an individual, a declaration of its responsible officer or agent with personal knowledge)

demonstrating the proposed bidder's good faith, including disclosure of:

1. The bidder's prepetition and postpetition relationship with other bidders, the debtor, major creditors or [equity security holders](#) in the case, or any of the debtor's officers, directors, agents, or employees;
2. The bidder's expected relationship after the sale with the debtor's present or former officers, directors, agents, or employees (including whether any offers of employment or compensation have been made or will be offered to debtor's present or former officers, directors, agents, or employees);
3. Whether any consideration is contemplated to be transferred or has been transferred by the bidder in connection with the sale to any person other than the debtor (or the [trustee](#) of the debtor's estate); and
4. The absence of fraud or collusion between the bidder and any other bidders or the debtor's officers, directors, agents or employees, or any attempt to take unfair advantage of other bidders.

For further guidance regarding good faith findings, see this court's Guidelines Re Sale Orders available in the Rules and Procedures section of the court's website.

F. Compromise/Settlement of Controversy – Rule 9019

Approval of compromises must be presented by the following: (1) a motion, and (2) a supporting declaration from someone with first hand knowledge of the reasons for, and the terms of, the settlement. The filing of a notice alone is inadequate. The motion should provide an explanation of why the compromise is "fair and equitable" and "reasonable." It should include an analysis of the four factors set out in [Martin v. Kane \(In re A & C Properties\)](#), 784 F.2d 1377, 1381 (9th Cir. 1986) that establishes that each of the "A & C" factors is satisfied. In routine settlements, this can be accomplished with a paragraph or two; in more complex matters a more detailed analysis is expected.

Not all documents need to be served on all parties. It is sufficient that creditors be given a notice that succinctly summarizes what has been stated in the motion and supporting declaration. See Rule 2002(a)(3).

G. First Day Motions

In the initial days of a case, Chapter 11 debtors frequently file financing motions, motions to pay prepetition wages of employees, or other motions that may have a significant effect on the future administration of the estate. Judge Efremsky requires that such motions be accompanied by declarations signed by representatives of the debtor with personal knowledge of the facts asserted and setting forth adequate financial information to put the motion(s) in context. The moving party should provide sufficient financial information to enable the court to assess the impact of the requested relief on unsecured creditors.

Specifically, the moving party should include information about the value of a debtor's assets, and the extent to which they are encumbered; the amount of current and long term liabilities, with specific mention of debts entitled to [priority](#) under 11 U.S.C. § 507; the current cash situation; the amount of prepetition wages owed and to whom (by name and position/occupation with the debtor and amount owed); the nature of the connections (if any) between the debtor and any party providing financing; and, unless unknown, the Chapter 11 exit strategy of the debtor (e.g., sale as a going concern, [liquidation](#) of assets, continuation of business with infusion of capital, etc.). See also the court's Guidelines for Cash Collateral and Financing Stipulations available in the Rules and Procedures section of the court's website.

H. Employment of Auctioneers and Brokers

Judge Efremsky will not allow auctioneers to recover labor costs or to charge a buyers' premium. Any application to employ an auctioneer should reflect the auctioneer's agreement not to charge such costs and premiums. Similarly, Judge Efremsky will not allow real estate brokers representing the estate (as seller) to represent buyers. See 11 U.S.C. § 327(a) (trustee may employ "professional persons, that do not hold or represent an interest adverse to the estate"). Any application to employ a real estate broker should reflect the agreement of the broker that he or she will not represent the buyer.

I. Fee Applications in Chapter 13 Cases

Even though Guideline 7 of the Guidelines for Compensation and Expense Reimbursement of Professionals and Trustees for the United States Bankruptcy Court for the Northern District of California does not specifically apply to fee applications in Chapter 13 cases, Judge Efremsky does require counsel in Chapter 13 cases to provide their clients with the letter described in that Guideline.

J. Fees Generally

Travel: Judge Efremsky generally will allow up to two hours of compensation for non-working airplane travel time, to account for inevitable delays for security and administration involved in air travel. Other air travel time is not likely to be compensable. per Guideline 17 of the Guidelines for Compensation and Expense Reimbursement of Professionals and Trustees.

Conflicts Checks/Ethical Walls/Change of Firms: Judge Efremsky expects counsel to write off, and will normally disallow, time spent identifying, clearing and avoiding conflicts and complying with Rule 2014(a). Such time is not very different from a firm absorbing the time expended on its own efforts to secure a new client, for which Judge Efremsky doubts any professional would bill. For the same reasons, he expects counsel to write off, and normally will disallow, time spent by professionals who change offices or firms, and need to clear conflicts; set up new files, brief new attorneys; or perform other tasks in connection with the transition.

Retainers: Judge Efremsky does not require retainers to be held in a trust account, unless that is the agreement between the attorney and the client.

K. Disclosure Statements

B.L.R. 3017-1 will be strictly enforced. In particular, counsel for the proponent must notify chambers by telephone at least three business days prior to the hearing that the hearing will go forward and a competent witness for the plan proponent must be present at the hearing. The court will normally refuse to proceed with the hearing if this call is not made or the debtor or other plan proponent does not appear.

L. Stipulations for Relief from Stay

Generally, Judge Efremsky will not approve a stipulation for relief from stay that purports to be effective in any subsequent case filed by the debtor. Judge Efremsky will approve provisions that grant relief from the stay on ten days' notice to the debtor and debtor's counsel if the debtor defaults on agreed payments under the order before debtor becomes post-petition current. If, however, the debtor defaults after becoming post-petition current, the movant must re-set the motion on ten days' notice.

Source URL (modified on 09/01/2015 - 7:15am):

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