

**UNITED STATES BANKRUPTCY COURT
for the
NORTHERN DISTRICT OF CALIFORNIA**

San Francisco Division
450 Golden Gate Avenue, Courtroom 19
San Francisco, California

Salinas Division
1000 South Main Street, Suite 214
Salinas, California

Practices and Procedures
Hon. Hannah L. Blumenstiel
(June 22, 2016)

Please note: Judge Blumenstiel will assume responsibility for Salinas Chapter 13 cases and related adversary proceedings as of July 1, 2015. These policies and procedures will apply to Salinas Chapter 13 cases and related adversary proceedings on and after July 1, 2015.

In addition to complying with the United States Bankruptcy Code (“Code”), Bankruptcy Local Rules for the United States Bankruptcy Court for the Northern District of California (“B.L.R.”), the Civil Local Rules of the United States District Court for the Northern District of California (“Civil L.R.”) and the Federal Rules of Bankruptcy Procedure (“Rules”), Judge Blumenstiel expects counsel and litigants appearing before her to be aware of and abide by the following practices and procedure. Any failure to comply with all applicable provisions of the Code, Rules, B.L.R. and Civil L.R. may be deemed sufficient grounds for the imposition of monetary or other sanctions.

A. Telephonic Appearances

1. San Francisco Cases

Regarding San Francisco cases, please refer to the San Francisco Division’s “Procedures for Appearances by Telephone,” which can be viewed at:

<http://www.canb.uscourts.gov/procedures/sf/procedures-appearances-telephone>

2. Salinas Chapter 13 Cases

For Salinas Chapter 13 cases, Judge Blumenstiel permits telephonic appearances, except in situations where a party or counsel will be examining witnesses or is directed by the Court to appear personally. There are no restrictions on eligibility to appear by telephone based on

geographic location of the counsel or the party. Parties or counsel wishing to arrange a telephonic appearance should refer to and follow the San Francisco Division's Telephonic Appearance Policy & Procedures (part 2), which are available at the link in section A.1, above.

3. Salinas Adversary Proceedings

To arrange an appearance at a telephonic case management conference, please follow the instructions attached to Judge Blumenstiel's Order Setting Telephonic Case Management Conference, which is available here:

<http://www.canb.uscourts.gov/procedure/san-jose-salinas/blumenstiel/judge-blumenstiels-order-setting-telephonic-case-management>.

To arrange a telephonic appearance at any other type of hearing in a Salinas adversary proceeding, please refer to and follow the San Francisco Divisions, Telephonic Appearance Policy & Procedures (part 2), which are available at the link in section A.1, above.

B. Communications with Chambers' Staff

Rule 9003 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, contact with a judge's law clerks constitutes contact with the judge. No attorney or litigant may engage in contact with Judge Blumenstiel or her Law Clerks in violation of these rules.

Should an attorney or litigant have questions concerning obtaining a calendar date, the status of an order, expedited hearings, or the like, he or she should contact Judge Blumenstiel's Courtroom Deputy, Diyana Staples, at (415) 268-2362 or diyana_staples@canb.uscourts.gov.

C. Chambers Copies

Judge Blumenstiel does not want chambers copies of any pleading or other document filed with the Court.

D. Discovery Disputes

In the event a discovery dispute arises, the parties shall meet and confer in good faith to attempt to resolve the issues. (See B.L.R. 1001-2(a) and Civil L.R. 37-1(a) and (b).) Should the parties fail to resolve a discovery dispute, the parties should not file discovery motions. Rather, the party that propounded the disputed discovery should submit a letter brief of no more than five (5) pages to the Court via email to Judge Blumenstiel's Courtroom Deputy, Diyana Staples, at diyana_staples@canb.uscourts.gov. After conferring with Judge Blumenstiel, Ms. Staples will advise the other parties of their deadline(s) to submit letter briefs in opposition to the initiating party's. Absent leave of Court, no party should submit a letter brief exceeding five (5) pages or include exhibits with letter briefs. Letter briefs in excess of five (5) pages or exhibits

submitted without the Court's permission will not be considered.

Any party requesting sanctions in connection with a discovery dispute must do so in a noticed motion.

E. Calendaring Matters

For San Francisco and Salinas cases, please refer to the San Francisco Division's Open Calendar Procedure and Judge Blumenstiel's Open Calendar Dates, which can be viewed at:

<http://www.canb.uscourts.gov/procedures/sf/open-calendar-procedure>

F. Notices of Hearings

With respect to matters for which a notice of hearing is filed and served pursuant to B.L.R. 9014-1(b)(1) or (2) on or after September 30, 2015, such notice of hearing shall include the appropriate schedule for filing papers, as set forth in B.L.R. 9014-1(c)(1) or (2). Any notice of hearing filed and served on or after September 30, 2015 that does not contain the correct schedule for filing papers will be subject to an order vacating the hearing and requiring the filing and service of a corrected notice of hearing.

After June 30, 2016, the preceding paragraph in this section F will apply to notices of hearing for motions which could be addressed ex parte, but as to which a party has nonetheless filed and served a notice of hearing.

G. Expedited Matters

Any request that the Court consider a matter on shortened time must be presented in an Application for an Order Shortening Time. Such Applications must comply with B.L.R. 9006-1 and Rule 9006(c) and must include a copy of the motion and supporting memorandum of points and authorities (but without supporting declarations, exhibits, requests for judicial notice, etc.) that the Applicant wishes the Court to consider on shortened time. In addition, such Applications should include a proposed briefing schedule and a proposed hearing date and time. The Applicant must support the Application with a declaration detailing the efforts to meet and confer with all affected parties concerning an abbreviated schedule and expedited hearing date. Generally, the Court will not convene hearings on Applications for Orders Shortening Time.

When using the Court's CM/ECF system to submit proposed orders shortening time, litigants should use the "Expedited" order type and should inform chambers that a proposed order has been submitted as set forth in section Q, below.

H. Temporary Restraining Orders

Any request for injunctive relief must be raised in an adversary proceeding. (Rule

7001(7).) The Court will not consider any request for a TRO unless the requesting party has commenced an adversary proceeding. Any litigant requesting a TRO must also file and serve an Application for an Order Shortening Time in accordance with the procedures set forth in section F, above.

I. Continuances

1. Trials

Judge Blumenstiel will continue trials only for good cause. An agreement of the parties to continue a trial does not necessarily constitute good cause and does not bind the Court. Any request for a continuance of a trial must comply with B.L.R. 9006-1.

2. Hearings in Contested Matters

Unopposed Continuances. If all parties to a contested matter agree to continue a hearing, they should – no later than 24 hours prior to the hearing – contact Judge Blumenstiel’s Courtroom Deputy, Diyana Staples, at (415) 268-2362 or diyana_staples@canb.uscourts.gov and inform the Court of the continued date and time. Parties unable to contact Ms. Staples more than 24 hours prior to a hearing to advise of a continuance must appear at the hearing to so advise the Court. Judge Blumenstiel expects continued hearing dates and times to conform to her Open Calendar Procedures, which can be viewed at:

<http://www.canb.uscourts.gov/procedures/sf/open-calendar-procedure>

If in connection with an unopposed continuance the parties wish to alter the schedule for filing of papers set forth in B.L.R. 9014-1(c), they may do so by agreement and without leave of Court so long as all papers are filed and served no fewer than 7 days before the continued hearing date.

A hearing to consider approval of a disclosure statement or confirmation of a chapter 11 plan may not be continued without leave of court in accordance with B.L.R. 9006-1.

Opposed Continuances. A party requesting a continuance that is opposed must comply with B.L.R. 9006-1.

3. Status Conferences

Status conferences in cases or adversary proceedings will not be continued absent leave of Court. Any request to continue a status conference must comply with B.L.R. 9006-1.

J. Stipulations, Adequate Protection Orders or Other Orders Resolving Contested Matters or Law & Motion Matters in Adversary Proceedings.

If the parties to a contested matter or a law & motion matter in an adversary proceeding

are able to resolve the issue(s) set for hearing prior to the date and time of the hearing, the parties must ensure that any order, including an order approving a stipulation, provides for the vacatur of the hearing.

K. Status Conferences in Adversary Proceedings

1. San Francisco Adversary Proceedings

Concurrent with the issuance of the Summons in any adversary proceeding, the Court will issue an Order re Initial Disclosures and Discovery Conference (“Scheduling Conference Order”) and will set a scheduling or status conference (“Initial Scheduling Conference”) approximately 60 days following the commencement of the adversary proceeding. Judge Blumenstiel expects compliance with the Court’s Scheduling Conference Order and particularly, expects the parties to timely prepare, file and serve a Discovery Plan unless the adversary proceeding falls within one of the exceptions identified in paragraph 4 of the Scheduling Conference Order.

If the adversary proceeding is one in which a Discovery Plan is not required, or if the status conference is one subsequent to the Initial Scheduling Conference, Judge Blumenstiel expects the parties, jointly or severally, to prepare, file and serve a short (no more than 5 pages) status conference statement detailing the status of the adversary proceeding, any issues outstanding from prior status conferences and the party’s or parties’ proposal for resolving such issues. The parties should file and serve their status conference statement(s) at least 7 days prior to the status conference.

2. Salinas Adversary Proceedings

Concurrent with the issuance of the Summons in any adversary proceeding, the Court will issue an Order Setting Telephonic Status Conference (“TSC Order”). Judge Blumenstiel expects compliance with the TSC Order. Judge Blumenstiel’s TSC Order is available here:

<http://www.canb.uscourts.gov/procedure/san-jose-salinas/blumenstiel/judge-blumenstiels-order-setting-telephonic-case-management>

L. Status Conferences in Chapter 11 Cases

Shortly after the commencement of any case filed under Chapter 11 of the Code, the Court will issue an order (“Chapter 11 Status Conference Order”) scheduling an initial status conference and requiring the debtor-in-possession to prepare and file a Status Conference Statement no fewer than 7 days prior to the status conference. Judge Blumenstiel’s Chapter 11 Status Conference Order can be viewed here:

<http://www.canb.uscourts.gov/procedures/sf/blumenstiel/judge-blumenstiels-chapter-11-status-conference-order>

The purposes of the Chapter 11 status conference are to: (1) review the financial, business or other problems that prompted the filing of a petition for relief; (2) understand the debtor's assets and liabilities; and (3) understand the debtor's strategy for exiting Chapter 11. Counsel should expect that the Court will generally set deadlines at the Chapter 11 status conference, including deadlines for filing and confirming a plan.

At least 7 days prior to any subsequent status conference, the debtor-in-possession or any Chapter 11 trustee appointed in the case shall file an updated Status Conference Statement.

Judge Blumenstiel expects strict compliance with the Code and Rules. In particular, failure to comply with the following requirements could lead to conversion of the case:

- Attendance at the meeting of creditors pursuant to Code section 341(a)
- Use of Cash Collateral. Code section 363(c)(2) prohibits the use of cash collateral unless the debtor has either the prior consent of each creditor having an interest in the cash collateral or an order from the Court
- Transactions outside the ordinary course of business. Code section 363(b)(1) requires notice and a hearing prior to engaging in any such transactions
- Postpetition taxes. The Court expects all postpetition taxes to be timely paid and all required tax returns timely filed
- Monthly Operating Reports. B.L.R. 2015-2 requires monthly operating reports and tax reports to be filed on the 21st day of each month
- Quarterly United States Trustee fees. 28 U.S.C. § 1930(a)(6) requires a quarterly fee to be paid to the United States Trustee. The amount of the fee will depend upon the amount of disbursements made by the debtor during each quarter
- Funds of the bankruptcy estate. B.L.R. 2015-1 requires all funds of the bankruptcy estate to be deposited and maintained in a debtor-in-possession bank account

M. Final Applications for Compensation in Chapter 7 Cases

All final applications for compensation shall be set for hearing. If such applications have been properly served and noticed for hearing and if no party has objected to allowance of the requested fees and expenses, then the Trustee and professionals whose fees and expenses are the subject of a pending application need not attend the hearing; provided however, that they are available by telephone at the scheduled time of the hearing. If a party appears to present oral opposition to any pending application, the Court will contact the Trustee, Trustee's counsel and any other professional whose fees and expenses are the subject of the oral opposition to facilitate their telephonic appearance at the hearing to address such opposition. Where a party files a written opposition to an application for compensation, the applicant shall appear at the hearing in

person or by telephone.

N. Standard-Form Combined Plan and Disclosure Statement for Chapter 11 Debtors

Judge Blumenstiel encourages the use of this District's Standard-Form Combined Plan and Disclosure Statement (the "Form Plan") in Chapter 11 cases for individual debtors. At the initial Chapter 11 Status Conference, debtors and/or their counsel should be prepared to discuss whether use of the Form Plan is appropriate in their case. The Form Plan can be viewed at:

<http://www.canb.uscourts.gov/forms/dist>

O. Hearing for Approval of Disclosure Statement in Chapter 11 Cases

All disclosure statement hearings should be scheduled on the Court's regular law and motion calendar. (See Section E for Calendaring Matters.) A court order is not necessary for scheduling a hearing on approval of a disclosure statement. Unless otherwise ordered by the Court, the requirements of B.L.R. 3017-1(a) shall apply to the approval of all disclosure statements.

Debtors who use the Form Plan may seek tentative approval of the disclosure statement on at least 14 days' notice to all parties that have appeared in the case (both ECF parties and non-ECF parties). The Form Plan shall be filed before or at the same time that the notice of hearing is filed, and debtors shall file a certificate of service indicating all parties that were served (electronically and by regular mail) with the notice of hearing. The deadline for filing objections to tentative approval of the disclosure statement is 7 days prior to the hearing. The Initial Status Conference Order abrogates the notice requirements of B.L.R. 3017-1(a) for debtors that use the Form Plan.

P. Amended Chapter 11 Plans and/or Disclosure Statements

Where it becomes necessary for a proponent of a Chapter 11 plan and/or disclosure statement to file and serve an amended version of either document, the proponent shall include as an exhibit to the amended plan or disclosure statement a blackline that indicates exactly what changes have been incorporated in the amended document.

Q. Submission of Proposed Orders

Litigants should remember that, where the Court has instructed a party to submit a proposed order after hearing, or where it is appropriate for the Court to grant a motion or application by default, they should submit such orders promptly. Failure to submit an order will result in no order being entered, which means that the relief sought has not yet been granted. For purposes of these Practices & Procedures, "submit" means the uploading of an order in compliance with the Court's E-Order Submission Procedures, which are available here:

or the submission of an order to chambers in hard copy where the submitting party does not have access to the Court's CM/ECF system.

Please note that the "Expedited" order type in the Court's CM/ECF system is reserved for emergency matters and matters that require the Court's immediate attention (for example, orders setting matters for an expedited hearing, and orders that, upon request of a party or on the Court's own motion, Judge Blumenstiel will immediately sign upon their submission). When submitting a proposed order using the "Expedited" order type, litigants should contact chambers via telephone or email to indicate that such an order is ready for signature.

R. Employment of Professionals

The Court expects professionals employed pursuant to section 327 of the Code to promptly file and serve applications requesting approval of their employment. The Court normally holds orders on employment applications for the period set forth in Rule 6003(a), if applicable or, where Rule 6003(a) no longer applies, holds such orders for 7 days. The Court encourages the use of its standard form Order Authorizing Employment of Counsel whenever appropriate. Professionals may request approval of their employment as of the date of the application or nunc pro tunc to the date upon which they begin providing services to the bankruptcy estate. Professionals seeking nunc pro tunc approval of their employment should address the factors set forth in *In re Atkins*, 69 F.3d 970 (9th Cir. 1995). Professionals who perform significant services prior to filing and serving an application requesting approval of their employment should consider requesting nunc pro tunc approval of their employment. **The Court does not require nunc pro tunc approval when the employment application is filed and properly served within 30 days of the commencement of work by the professional.**

Section 328 of the Code provides a potential limitation on the Court's ability to alter compensation of professionals at the conclusion of their employment. That section provides that the Court may allow compensation different from that contemplated by the terms and conditions initially approved under Code sections 327 or 1103 "if such terms prove to have been improvident in light of developments not capable of being anticipated" at the time of the initial employment.

In this circuit, the limitation of section 328 will not apply "unless a professional is unambiguously employed pursuant to section 328." *In re Circle K Corp.*, 279 F.3d 669, 674 (9th Cir. 2002). The Ninth Circuit Court of Appeals suggests that the intent to apply section 328 to a professional's employment should be demonstrated both in the employment application and the employment order. *Circle K*, 279 F.3d at 674 n.5. In the event that section 328 is not unambiguously invoked in connection with a professional's employment, the Court will evaluate that professional's applications for compensation according to the criteria set forth in section 330, along with other available evidence of the reasonableness of the compensation for which the Court's approval is sought. When section 328 applies, any application for compensation must include a short justification of the continued reasonableness of the proposed terms and

conditions of employment (i.e., the reasonableness of proposed hourly rates or the propriety of a contingent fee arrangement given the risk and potential recovery).