

Judicial Procedures Survey for the Honorable Alan Jaroslovsky

Many years ago, well before the implementation of ECF filings, the Bench-Bar Liaison Committee generated a survey of the Northern District Bankruptcy Judges. The questions focused on various practice procedures utilized by the judges and the questions and responses were printed out in a black notebook. The following is an effort to update and replace the old notebook. We have surveyed the judges in response to a series of questions divided up into different topics. Each judge's responses to the survey are posted online in the section specific to that judge. In the event of any conflict between the judge's responses to the survey and his or her posted procedures and practice, the posted procedures and practice, as well as the Local Rules will control.

Please direct questions and comments to: <http://www.canb.uscourts.gov/procedures/dist/bench-bar-liaison-committee-roster>

I. CALENDAR HEARINGS

Questions	Response
1. Does the judge schedule particular types of matters for certain days or times?	Law and motion most Fridays at 9 or 10 (your choice). Stay relief second and fourth Thursdays at 9, final hearings at 10. Chapter 13s second and fourth Wednesdays at 1:30 (regular calendar) and 3:00 (Judge's calendar). Scheduling conferences third Monday at 2:00.
2. Does the judge allow hearings to be set by parties and attorneys using a "self-calendaring" system (in which a range of dates are available for selection without having a date personally from the courtroom deputy)?	Yes. Only final hearings and evidentiary hearings are set by the court. Otherwise, all our calendars are open.
3. May parties and attorney contact the judge's staff to request the Court to specially set a date and time for a longer hearing?	Yes. Contact Tara Arruda or Dan Sondheim. Do not contact law clerks.
4. Where are the daily calendars of the judge's hearings posted?	Online and on bulletin board outside court.

II. TENTATIVE RULINGS

Questions	Response
1. Does the judge issue tentative rulings?	Sometimes.
2. How are the tentative rulings made known to the parties?	NEF upon filing.
3. If the tentative rulings are posted on the Court's website, does the judge update tentative rulings?	N/A
4. If the judge issues tentative rulings in advance of the hearing, may the parties submit without an appearance?	Yes.
5. If the parties may submit on the Court's tentative ruling without an appearance, must they notify the calendar clerk before the hearing that they are doing so, or may they simply not appear without notice?	Better let courtroom deputy know.

III. EMERGENCY MATTERS AND APPLICATIONS FOR ORDERS SHORTENING TIME FOR HEARING

Questions	Response
1. Does the judge allow hearings on an emergency basis (less than 48 hours' notice)?	Yes.
2. If so, who is the point of contact for arranging for consideration of emergency motions?	Email an application and form of order in wpd or word format to chambers_orders@canb.uscourts.gov .
3. Does the judge calendar a hearing on an emergency motion prior to receipt and review of moving papers?	Yes.
4. For emergency motions or hearings on shortened time, does the judge require delivery of the judge's copy of the moving or responding papers to chambers?	No. We do not accept paper copies of anything.
5. Does the judge act on emergency motions without requiring notice to any party whatsoever?	Yes, if permitted by rules (e.g. FRCP 65(b)(1)) and common sense.
6. Does the judge require declarants to be present in court on emergency motions?	No.

7.	Does the judge require some notice to another party before granting an application for order shortening time for hearing?	No.
8.	Does the judge grant orders shortening time for hearings (other than emergency matters) upon a showing of good cause?	Yes.
9.	Does the judge routinely grant orders shortening time for hearings on the following matters? (a) Relief from stay motion in residential unlawful detainer cases (b) Chapter 11 first day motions, including cash collateral hearings (c) Sales of property (d) Applications for temporary restraining orders (e) Other matters (please specify)	(a) Yes (b) Yes (c) No (d) Yes (e) None I can think of

IV. HEARINGS & TELEPHONIC APPEARANCES

Questions	Response
1. Are telephonic appearances are generally allowed by the judge?	Yes

2.	What matters, if any, will the judge not allow telephonic appearances? (a) Disclosure Statement & Confirmation Hearings (b) Evidentiary Hearings (c) Other matters (please specify)	(a) Telephonic appearance not allowed for anyone contesting a disclosure statement. Otherwise OK. (b) Not permitted unless the parties stipulate to all facts. (c) Telephonic appearances not permitted in discovery disputes.
3.	Does the judge consider priority requests from counsel at the time of calendar call?	Courtroom deputy's discretion. Ask before court starts.
4.	Does the judge hear stipulations and uncontested matters and requests for continuances before hearing opposed matters?	No. Inform courtroom deputy before court starts as to continuances and stips.
5.	Does the judge sign orders on the bench at the conclusion of a hearing?	In paper? No way. This is the 21 st century. Email your order in wpd or doc format to chambers_orders@canb.uscourts.gov.

V. PROCESSING ORDERS

Questions		Response
1.	Does the court require an order to be approved as to form prior to being submitted?	No.
2.	If not, does the court lodge an order for 7 days under LBR 9021-1 (c)?	Sometimes. But I don't wait if the order is exactly what I ruled or I have drafted the order myself.

3.	<p>What procedure does the judge prefer if there is an objection to the form of order that cannot be resolved by the parties?</p> <p>(a) File a formal objection</p> <p>(b) letter to the judge setting forth the objection</p> <p>(c) Contact the judge's clerk to set up a conference call</p> <p>(d) Either procedure (please specify)</p>	<p>(a) Not required</p> <p>(b) No letter, but you can email your proposed form of order to chambers_orders@canb.uscourts.gov with a note that there is a disagreement as to form.</p> <p>(c) If a conference call is necessary, I will arrange it. Believe it or not, I can usually draft an order which properly reflects my ruling without help.</p> <p>(d) The cases are yours. The order is mine. The more clever things you try to stuff into your form of order, the more likely you will receive an order drafted by me without your input.</p>
4.	If a large number of parties are entitled to receive notice of entry of an order signed by the judge, what procedure does the judge use to accomplish service of notice of entry of that order?	NEF.
5.	What are the judge's procedures when parties cannot agree on the form of the order?	I draft it myself.
6.	How long should counsel or parties wait before contacting the staff regarding the status of a lodged order?	You can inquire at any time, but please check the docket first to see if it has already been signed. Orders rarely if ever held more than seven days.
7.	Does the judge permit attorneys and parties to communicate with the law clerk regarding rejected proposed orders?	NO! But you can inquire as to status by email to chambers_orders@canb.uscourts.gov .

VI. JUDGE'S COPIES OF FILED DOCUMENTS

Questions	Response
1. Does the court require courtesy copies of pleadings filed in the case?	Never. Ever. Don't.
2. Are there exceptions to this rule, e.g. relief from stay motions?	If you file a 75-page pleading not properly indexed I might ask you for a paper copy. I never have yet, but I guess I might.

VII. COMMUNICATIONS WITH JUDGE'S STAFF

Questions	Response
1. Does the judge allow attorneys and pro per parties to communicate with the judge's courtroom deputy regarding: (check where appropriate) (a) Scheduling matters (b) Status of orders (c) Other matters (please describe)	(a) Yes (b) Yes, but an email to chambers_orders@canb.uscourts.gov is better. (c) No restrictions as to courtroom deputy.
2. Does the judge permit attorneys and pro per parties to communicate with the judge's law clerk regarding: (check where appropriate) (a) Scheduling matters	(a) NO (b) NO (c) You may not communicate with my staff, except to send an email to chambers_orders@canb.uscourts.gov .

(b) Status of orders	
(c) Other matters (please describe)	

VIII. STATUS CONFERENCES

Questions	Response
Chapter 11 Cases:	
1. Are status conferences held in Chapter 11 cases?	Yes
2. Are status conference statements required?	Yes
3. Are the required contents of the statement set forth in the judge's order setting the status conference?	Yes
4. Is the debtor or debtor's responsible individual required to appear at the status conference?	Yes
5. Will the judge set plan filing deadlines at the status conference?	I set deadlines for confirmation. Any fool can file a plan.
6. Can the status conference be continued? If so, can what is the preferred method for doing so?	On the record in court or by written application well before the conference.
7. Does the judge impose sanctions for failure to file the status conference report?	Yes
8. Is a scheduling order prepared after a status conference when the judge sets a plan and disclosure statement deadline	I issue an order with a deadline for confirmation of a plan.

	and if so, who prepares the order?	
Adversary Proceedings:		
9.	Are status conference statements required? If so, when are they due?	No
10.	Are the required contents of the statement set forth in the judge's order setting the status conference?	N/A
11.	Does the judge impose sanctions for failure to file the status conference statement?	N/A
12.	Is the represented party required to appear at the status conference?	No
13.	Will the judge set a trial date at the status conference?	Usually
14.	Does the judge require the parties to file a discovery plan?	No
15.	Can the status conference be continued? If so, what is the preferred method for doing so, and what, if any, deadlines apply?	Yes. Contact Tara Arruda.

IX. RELIEF FROM STAY MOTIONS

Questions		Response
1.	Are appearances required if there is a statement of non-opposition from the debtor and trustee?	No, but I have never seen that. Better make an appearance by telephone.
2.	Are telephonic appearances allowed at relief from stay matters?	Yes, for preliminary hearings.
3.	Will the court hear testimony at a final hearing?	Yes. Direct testimony usually is by declarations. Declarants must be in court to

	be cross-examined unless the other parties waive the right to cross-examine.
4. Does the judge grant ex parte relief from stay in unlawful detainer cases?	Often
5. Does the judge have special procedures for handling residential relief from stay motions? What are they?	File an application and email a form of order to chambers_orders@canb.uscourts.gov.
6. Does the judge permit shortened notice on motions for relief from stay where there is proof of any of the following: (a) A prior unlawful detainer judgment (b) A prior adequate protection order (c) Multiple bankruptcy filings (d) Other conduct constituting bad faith (e) A Chapter 13 confirmation hearing is already scheduled (f) None of the above (g) Other (please specify)	(a) Yes. I will usually grant ex parte in residential cases. (b) Yes (c) Yes. I will often grant ex parte (d) Yes (e) ? (f) (g)
7. Does the judge hear relief from stay motions on shortened notice in non-residential unlawful detainer cases?	Sometimes.
8. Does the judge require declarants to be present in court for final (evidentiary) hearing on motions from relief from the automatic stay?	Yes, unless all parties have waived the right to cross-examine.

9.	Upon an appropriate evidentiary showing, will the judge award prospective relief from stay effective for 180 days in future bankruptcy cases filed by the debtor?	Yes.
10.	Does the judge grant requests for retroactive annulment of the automatic stay?	Yes, though not routinely.

X. MOTION PRACTICE

Questions		Response
1.	When does the judge require declarants to be present in court on emergency motions or hearings on shortened time?	Only if ordered. I don't recall ever taking testimony at an emergency hearing.
2.	When does the judge require declarants to be present in court on regularly scheduled motions?	Only final hearings.
3.	Does the judge require written evidentiary objections to be made in a separate document?	No
4.	Can a party continue a motion on its own?	There is a rule on this. I follow it.
5.	Can a hearing on a motion be continued by stipulation?	Always. No order necessary. Just contact Tara Arruda or Dan Sondheim.
6.	Does the judge allow true ex parte relief (without notice to the opposing party) when issuing temporary restraining orders?	When permitted by FRCP 65(b)(1).
7.	If not, what notice does the judge require?	

XI. PROOF OF SERVICE REQUIREMENTS

Questions	Response
1. Does the judge deny motions for failure of the moving party to prepare and timely file proof of service which complies with all of the requirements of Local Bankruptcy Rule 9013-3?	Yes
2. Does the judge continue motions to allow movant to provide proof of service?	Yes
3. Does the judge deny motions for failure to identify on the proof of service the capacity in which parties have been served as required by the Local Bankruptcy Rule 9013-3(b)	No. NB: I follow the majority rule and require officers of corporations to be served by name, not just title. See 451 BR 604, 606.

XII. CONTINUANCES

Questions	Response
1. Does the judge allow for continuances of motions other than by noticed motion or written stipulation?	Yes. No order is necessary if all parties agree. Just inform Tara Arruda or Dan Sondheim.
2. Does the judge permit stipulated or unopposed oral requests for continuances?	Yes.
3. Does the judge permit continuances of trial dates by stipulation of the parties?	I never did before the Great Recession. I have for the last three years. Not sure if I will go back to old practices.
4. Does the judge permit continuances of disclosure statement hearings or confirmation hearings by stipulation of	Yes, but an appearance is necessary to announce it in open court if it has been general noticed. Telephonic appearance OK.

the parties?	
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XIII. DISCOVERY DISPUTES

Questions	Response
1. Does the judge require a noticed motion in order to hear a discovery dispute?	Yes
2. Does the judge resolve discovery disputes by conference calls?	No, unless Judge Montali wants to hear it. He loves them. I don't.
3. Does the judge hear discovery dispute motions without full compliance with the requirements of Civil Local Rule 37 (a)(1)?	No
4. Does the judge mandate strict compliance with the Civil Local Rule 37 (a)(1) requiring that the parties to a discovery dispute to meet and confer?	You bet.
5. Does the general discovery cutoff date include disclosure of expert witnesses?	Yes
6. What is the deadline for holding a hearing on a discovery dispute motion?	I will not continue a trial over a discovery dispute, so you better get it heard while I can grant some relief that does not include a continuance.

XIV. CONVERSION AND RULE 2004 MOTIONS

Questions	Response
1. What is the minimum amount of notice the judge requires for a FRBP 2004 Examination?	No fixed time, but I won't approve examinations on short notice without consent nor will I allow examinations remote to the examinee.
2. Does the judge sign orders on initial motions to convert the case from Chapter	Yes, if a deadline I have set has passed.

	7 to Chapter 11, 12 or 13 or from Chapter 11 to Chapter 7 without a hearing?	
3.	Does the judge rule on motions under FRBP 2004 without a hearing?	Yes
4.	What procedures does the judge require in order for a party to object to a 2004 exam or the documents demanded as part of the 2004 exam?	You better promptly seek a protective order. I will shorten time as necessary.
5.	Does the judge require meet and confer efforts before a motion for protective order has been filed regarding a FRBP 2004 examination?	Yes

XV. CONSUMER CASES

Questions		Response
1.	Does the judge require hearings on reaffirmation agreements if the party is represented by counsel and counsel has certified that the party has the ability to meet the obligations of the agreement, despite the presumption of undue hardship?	No
2.	Does the judge require an adversary proceeding to avoid a junior lien?	No, but smart attorneys file APs.
3.	Does the judge require the debtor's presence at confirmation hearings?	No
4.	Does the judge require pre-hearing statements prior to confirmation hearings? If so, does the judge prefer a joint statement?	No

5.	Does the judge require debtor's counsel to be physically present in court for relief from stay hearings?	No
6.	Does the judge allow step plans in which monthly payments are increased during plan performance?	Only if there is a real reason why the step-up is feasible. Good reason is that car payments will end. A bad reason is the hope that income will rise.
7.	Will the judge confirm a plan prior to a loan modification being finalized, provided creditor is receiving adequate protection payments?	Yes
8.	At relief from stay hearings does the judge: (a) Require waiver of the Rule 4001 stay? (b) Allow a three strikes provision that allow automatic relief from stay if a debtor is late on three payments?	(a) No (b) Yes, though I don't really understand the question. Parties can stipulate to whatever they want. I rarely make such orders on my own.

XVI. CHAPTER 11 PROCEDURES

Questions		Response
1.	Does the judge prefer that a party use the combined model plan and disclosure statement for individual Chapter 11 cases?	No.
2.	Does the judge prefer that a party use the combined model plan and disclosure statement for corporate Chapter 11 cases?	No

3.	Does the judge allow less than 35 days' notice of the hearing on a disclosure statement?	Yes
4.	Does the judge use a fast track procedure involving preliminary review and conditional approval of disclosure statements without a hearing?	Yes
5.	Does the judge allow the plan and disclosure statement be combined into a single document in Chapter 11 cases that are not small business Chapter 11 cases?	NO
6.	Does the judge require the plan proponent to submit admissible evidence for the plan confirmation hearing to prove the plan is confirmable?	Only if plan is contested.
7.	If so, can the plan proponent do this by offer of proof or by pre-hearing submission of a declaration?	Yes
8.	Does the judge prefer the bar date for administrative claims be in the plan, in the order confirming the plan or does the court set such date by separate order?	No preference.

XVII. DEFAULT JUDGMENT

Questions		Response
1.	Does the judge require admissible evidence in support of a motion for default judgment?	Usually.
2.	Does the judge require a hearing on a motion for default judgment?	No

3.	If so, does the judge require 28 days' notice of such a hearing?	N/A
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XVIII. TRIAL PROCEDURES

Questions		Response
1.	Does the judge have mandatory trial procedures in addition to requirements under the Local Bankruptcy Rules?	Yes
2.	If so, how are these procedures obtained?	They are in my scheduling conference order.
3.	When are trial dates set by the judge?	At the scheduling conference.
4.	Does the judge hold pre-trial conferences and if so when are those held relative to the trial date?	Only in jury trial cases.
5.	Does the judge require direct testimony from witnesses in party's control to be presented by declaration?	Sometimes
6.	If not required, under what circumstances does the judge permit direct testimony from witnesses in a party's control to be presented by declaration upon the request of the parties?	Usually accounting and expert testimony.
7.	Does the judge have published procedures regarding the exchange of declarations in advance of trial?	In the scheduling conference order.
8.	Does the judge require parties to present written evidentiary objections to trial declarations and exhibits of the opposing	No

	party in advance of trial?	
9.	Does the judge require the exchange of witness lists before trial?	I enforce Rule 26.
10.	Does the judge require the submission of bench copies of the exhibits before trial?	At trial, not before.
11.	How are the judge's special procedures for presentation of exhibits in the judge's courtroom obtained?	I have none. Not a big fan of dog and pony shows, though.
12.	Does the judge have any deadline for bringing motions in limine? If so, when are they set.	I have never understood the purpose of a motion in limine in a bench trial.

XIX. SETTLEMENT AND MEDIATION

Questions		Response
1.	Does the judge sua sponte order parties to the court's Bankruptcy Dispute Resolution Program?	Not over the objection of a party.
2.	Does the judge use settlement conferences to encourage disposition of adversary proceedings and contested matters?	No. BDRP is fine.
3.	Does the judge use settlement conferences to encourage disposition of Chapter 11 plan confirmation disputes?	No. BDRP is fine.
4.	Would the judge act upon request as a settlement judge on the case assigned to him or her as the trial judge?	No