

Judicial Procedures Survey for the Honorable Stephen L. Johnson

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?	Yes. Calendars are set approximately six to twelve months in advance, principally to ensure an even distribution of work between weeks, and time for calendar preparation.
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. Calendars are set approximately six to twelve months in advance and are made available for self-calendaring through ECF. There is no need to contact the courtroom deputy for matters being noticed on a regular time schedule (e.g., 21 or 28 day calendars, see BLR 9014-1). The range of dates is available on the court's website.
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. The courtroom deputy can advise parties if the judge is available at a particular time. Please refer to section III for orders shortening time.
4. Where are the daily calendars of the judge's hearings posted?	On the Bankruptcy Court's website.

II. TENTATIVE RULINGS

Questions	Response
1. Does the judge issue tentative rulings?	Occasionally at present. The court is in the process of creating a system for tentative rulings, particularly in Adversary Proceedings and for Motion Calendars.
2. How are the tentative rulings made known to the parties?	At present, this varies. In the future, the court's website will contain a link with tentative rulings.
3. If the tentative rulings are posted on the Court's website, does the judge update tentative rulings?	Tentative rulings are only drafted once; at a hearing the court may alter the tentative.
4. If the judge issues tentative rulings in advance of the hearing, may the parties submit without an appearance?	At present, no. In the future, 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?	Under the system the court intends to adopt, yes.

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?	The courtroom deputy, Tanya Bracegirdle (408-278-7556).
3. Does the judge calendar a hearing on an emergency motion prior to receipt and review of moving papers?	No. It is important to note that if a party is requesting an order shortening time, they must first comply with BLR 9006-1. The court only shortens time if there is cause to do so and the adverse parties have been advised of the request for an order shortening time and stated a position on that request. Notice of a hearing on shortened time should only be given after the court has signed an order shortening time.
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. E-filing is satisfactory.
5. Does the judge act on emergency motions without requiring notice to any party whatsoever?	This would be a rare case, as ex parte relief is limited.

6.	Does the judge require declarants to be present in court on emergency motions?	No, but it is often helpful if the moving papers have omitted factual matters of significance to the request.
7.	Does the judge require some notice to another party before granting an application for order shortening time for hearing?	Yes. See BLR 9006-1. The court does not sign orders shortening time unless parties have complied carefully with the applicable local rule.
8.	Does the judge grant orders shortening time for hearings (other than emergency matters) upon a showing of good cause?	Yes, subject to BLR 9006-1.
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) No, as the calendars are held nearly every week and the local rules already permit 14 days' notice. (b) Yes, subject to BLR 9006-1. (c) Yes, subject to BLR 9006-1. (d) TROs are the unusual case where ex parte relief may be available. However, the court will require careful analysis and a compelling factual record. (e) --.

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) Allows telephonic appearances. (b) No telephonic appearances by counsel or witnesses. (c) --.
3. Does the judge consider priority requests from counsel at the time of calendar call?	Yes.
4. Does the judge hear stipulations and uncontested matters and requests for continuances before hearing opposed matters?	Yes. On relief from stay calendars, yes. For other calendars, the court may hear such matters out of order.
5. Does the judge sign orders on the bench at the conclusion of a hearing?	Paper orders – rarely as it creates additional work for staff. E-Orders – routinely signed from the bench.

V. PROCESSING ORDERS

Questions	Response
1. Does the court require an order to be approved as to form prior to being submitted?	In a matter that was contested, yes. See BLR 9021-1
2. If not, does the court lodge an order for 7 days under LBR 9021-1 (c)?	Yes.
3. What procedure does the judge prefer if there is an objection to the form of order that cannot be resolved by the parties? (a) File a formal objection (b) letter to the judge setting forth the objection (c) Contact the judge's clerk to set up a conference call (d) Either procedure (please specify)	File a document lodging an objection, and let the courtroom deputy know by telephone.
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?	The only parties who are entitled to notice of an order are those who appeared or objected. Otherwise, orders are available on ECF and it's the movant's responsibility to serve notice of entry of order.

5.	What are the judge's procedures when parties cannot agree on the form of the order?	Someone should lodge a form of order and someone else should object. The court will consider the papers filed. If there's a dispute that the court cannot resolve, it will probably set a telephonic hearing.
6.	How long should counsel or parties wait before contacting the staff regarding the status of a lodged order?	If there is a dispute, time is important. File an objection to the form and contact the courtroom deputy. Generally, orders are held 7 days.
7.	Does the judge permit attorneys and parties to communicate with the law clerk regarding rejected proposed orders?	No.

VI. JUDGE'S COPIES OF FILED DOCUMENTS

Questions		Response
1.	Does the court require courtesy copies of pleadings filed in the case?	Relief from stay—no. Other motions—yes.
2.	Are there exceptions to this rule, e.g. relief from stay motions?	See above.

VII. COMMUNICATIONS WITH JUDGE'S STAFF

Questions	Response
<p>1. Does the judge allow attorneys and pro per parties to communicate with the judge's courtroom deputy regarding: (check where appropriate)</p> <p>(a) Scheduling matters</p> <p>(b) Status of orders</p> <p>(c) Other matters (please describe)</p>	<p>(a) Yes.</p> <p>(b) Yes.</p> <p>(c) The courtroom deputy is the point of contact.</p>
<p>2. Does the judge permit attorneys and pro per parties to communicate with the judge's law clerk regarding: (check where appropriate)</p> <p>(a) Scheduling matters</p> <p>(b) Status of orders</p> <p>(c) Other matters (please describe)</p>	<p>Communications with the judge's law clerk are <u>barred</u> as ex parte communications.</p>

VIII. STATUS CONFERENCES

Questions	Response
Chapter 11 Cases:	
<p>1. Are status conferences held in Chapter 11 cases?</p>	<p>Yes.</p>

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?	No.
5.	Will the judge set plan filing deadlines at the status conference?	Ordinarily, yes.
6.	Can the status conference be continued? If so, can what is the preferred method for doing so?	Yes, by filing an application to continue the hearing and serving that application on secured creditors, any committee, and creditors who have been active in the case.
7.	Does the judge impose sanctions for failure to file the status conference report?	Ordinarily, no. But not filing a status conference statement suggests the case is not being properly administered and litigated.
8.	Is a scheduling order prepared after a status conference when the judge sets a plan and disclosure statement deadline and if so, who prepares the order?	Ordinarily, the court or the United States Trustee.
Adversary Proceedings:		
9.	Are status conference statements required? If so, when are they due?	7 days prior to the hearing.
10.	Are the required contents of the statement set forth in the judge's order setting the status conference?	Yes.
11.	Does the judge impose sanctions for failure to file the status conference statement?	No. But, if may be a factor if the case is subject to dismissal for other reasons, such as failure to appear.
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?	Ordinarily, yes.
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, by filing an application or stipulation to continue the hearing. If the adverse party does not consent, the applicant should make that clear in the application.

IX. RELIEF FROM STAY MOTIONS

Questions		Response
1.	Are appearances required if there is a statement of non-opposition from the debtor and trustee?	Yes.
2.	Are telephonic appearances allowed at relief from stay matters?	Yes.
3.	Will the court hear testimony at a final hearing?	Yes.
4.	Does the judge grant ex parte relief from stay in unlawful detainer cases?	No.
5.	Does the judge have special procedures for handling residential relief from stay motions? What are they?	No.

6.	<p>Does the judge permit shortened notice on motions for relief from stay where there is proof of any of the following:</p> <ul style="list-style-type: none"> (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) 	<p>The court will grant an order shortening time that complies with BLR 9006-1 and demonstrates cause for shortening time. No special procedures are in place for any of the identified matters.</p>
7.	Does the judge hear relief from stay motions on shortened notice in non-residential unlawful detainer cases?	No.
8.	Does the judge require declarants to be present in court for final (evidentiary) hearing on motions from relief from the automatic stay?	Yes. Final hearings generally are specially set by the court so counsel will have ample notice of the hearing date.
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, when appropriate on the facts and consistent with the law.

10. Does the judge grant requests for retroactive annulment of the automatic stay?	Yes, when appropriate on the facts and consistent with the law.
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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?	In general, it is a good idea to have declarants in court for emergency hearings as the court often has questions that counsel cannot answer.
2. When does the judge require declarants to be present in court on regularly scheduled motions?	Not required.
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?	Not if someone has opposed the motion.
5. Can a hearing on a motion be continued by stipulation?	Yes. If the parties intend to continue a matter, it is helpful to the court if they advise the courtroom deputy as soon as possible. There are two ways to accomplish this: (1) Agreed continuances can be announced at the time of the original hearing on the record, or (2) Continuances can be accomplished by stipulation filed with a proposed order. Consult the court's website or with the courtroom deputy for future hearing dates.
6. Does the judge allow true ex parte relief (without notice to the opposing party) when issuing temporary restraining orders?	Yes, when appropriate on the facts and consistent with the law.
7. If not, what notice does the judge require?	N/A

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. Without a certificate of service, a motion is considered ex parte. Often, the ECF system does not suffice for service in the initial stages of a case due to problems with addresses and the common practice of listing attorneys rather than litigants on the list of creditors.
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.

XII. CONTINUANCES

Questions	Response
1. Does the judge allow for continuances of motions other than by noticed motion or written stipulation?	No. The court may grant request to continuance at the hearing.
2. Does the judge permit stipulated or unopposed oral requests for continuances?	Probably, although the court appreciates a few days warning.
3. Does the judge permit continuances of trial dates by stipulation of the parties?	No.

4.	Does the judge permit continuances of disclosure statement hearings or confirmation hearings by stipulation of the parties?	Yes, subject to any scheduling order the court has entered, which may impose deadlines that must be met in any event.
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XIII. DISCOVERY DISPUTES

Questions		Response
1.	Does the judge require a noticed motion in order to hear a discovery dispute?	No.
2.	Does the judge resolve discovery disputes by conference calls?	Yes.
3.	Does the judge hear discovery dispute motions without full compliance with the requirements of Civil Local Rule 37 (a)(1)?	Yes, for an initial dispute. If matters cannot be resolved by the court's initial intervention (see #2), the court may require a full motion and compliance with appropriate rules, including FRBP 9037.
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?	Yes. And this makes sense.
5.	Does the general discovery cutoff date include disclosure of expert witnesses?	Ordinarily, the court will stagger the two dates to allow regular discovery to close before expert discovery.
6.	What is the deadline for holding a hearing on a discovery dispute motion?	Before discovery cutoff. As set forth in the trial scheduling order.

XIV. CONVERSION AND RULE 2004 MOTIONS

Questions	Response
1. What is the minimum amount of notice the judge requires for a FRBP 2004 Examination?	2-3 days; enough time for adverse party to interpose an objection.
2. Does the judge sign orders on initial motions to convert the case from Chapter 7 to Chapter 11, 12 or 13 or from Chapter 11 to Chapter 7 without a hearing?	Yes, if proper notice has been given. Conversion from ch. 7 to ch. 13 must comply with procedures in BLR 1017-1. Other motions to convert may utilize the notice and opportunity for hearing procedure without need for actual 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?	File an objection, advise the courtroom deputy that you have done so.
5. Does the judge require meet and confer efforts before a motion for protective order has been filed regarding a FRBP 2004 examination?	Yes, this is always a good idea.

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?	Decided on a case-by-case basis; court must evaluate whether the presumption is rebutted by an explanation that is satisfactory.
2. Does the judge require an adversary proceeding to avoid a junior lien?	No.
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?	In chapters 12 and 13, no. In chapter 11, yes.
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?	Yes, subject to proof that the step ups are achievable.
7. Will the judge confirm a plan prior to a loan modification being finalized, provided creditor is receiving adequate protection payments?	Yes, subject to the conditions set forth in the District's Guidelines Regarding Residential Loan Modification on Relief from Stay Motions and in Chapter 11 and Chapter 13 Plans.

8.	At relief from stay hearings does the judge:	(a) Yes, ordinarily when neither counsel or the debtor appears to contest relief. Otherwise, no.
	(a) Require waiver of the Rule 4001 stay?	(b) This is not part of my order. It is commonly a part of stipulations agreed by the parties and is approved in that context.
	(b) Allow a three strikes provision that allow automatic relief from stay if a debtor is late on three payments?	

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?	Yes.
2.	Does the judge prefer that a party use the combined model plan and disclosure statement for corporate Chapter 11 cases?	The model plan is not really set up for this purpose, and the court finds it would probably not work.
3.	Does the judge allow less than 35 days' notice of the hearing on a disclosure statement?	Ordinarily, no.
4.	Does the judge use a fast track procedure involving preliminary review and conditional approval of disclosure statements without a hearing?	No.

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?	Depending on the circumstances, this could be permitted.
6.	Does the judge require the plan proponent to submit admissible evidence for the plan confirmation hearing to prove the plan is confirmable?	Yes.
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?	Either practice is satisfactory.

XVII. DEFAULT JUDGMENT

Questions		Response
1.	Does the judge require admissible evidence in support of a motion for default judgment?	Yes.
2.	Does the judge require a hearing on a motion for default judgment?	No. These can be submitted on the papers. If the court has concerns it will set a hearing.
3.	If so, does the judge require 28 days' notice of such a hearing?	No.

XVIII. TRIAL PROCEDURES

Questions	Response
1. Does the judge have mandatory trial procedures in addition to requirements under the Local Bankruptcy Rules?	The court has a pre-trial order that is used in all cases.
2. If so, how are these procedures obtained?	In the court's pre-trial order.
3. When are trial dates set by the judge?	Generally, at the first or second status conference.
4. Does the judge hold pre-trial conferences and if so when are those held relative to the trial date?	Approximately 2 weeks prior to the trial date, depending on calendar availability.
5. Does the judge require direct testimony from witnesses in party's control to be presented by declaration?	Depends on the case. The decision is made at trial setting or pretrial conference.
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?	The court discusses this at the pre-trial conference. The court is open to direct evidence in declaration form. However, evidence by declaration is often problematic in § 523(a) and 727(a) proceedings due to issues of reliance and intent.
7. Does the judge have published procedures regarding the exchange of declarations in advance of trial?	In the court's pre-trial order.
8. Does the judge require parties to present written evidentiary objections to trial declarations and exhibits of the opposing party in advance of trial?	Any evidentiary objections should be identified in the joint pre-trial statement, as set forth in the court's trial scheduling order.
9. Does the judge require the exchange of witness lists before trial?	Yes.

10.	Does the judge require the submission of bench copies of the exhibits before trial?	Yes.
11.	How are the judge's special procedures for presentation of exhibits in the judge's courtroom obtained?	By contacting the courtroom deputy.
12.	Does the judge have any deadline for bringing motions in limine? If so, when are they set.	No, these can be submitted at trial.

XIX. SETTLEMENT AND MEDIATION

Questions		Response
1.	Does the judge sua sponte order parties to the court's Bankruptcy Dispute Resolution Program?	No.
2.	Does the judge use settlement conferences to encourage disposition of adversary proceedings and contested matters?	Of course.
3.	Does the judge use settlement conferences to encourage disposition of Chapter 11 plan confirmation disputes?	No.
4.	Would the judge act upon request as a settlement judge on the case assigned to him or her as the trial judge?	Normally, I do not settle cases I have to try.