

# NORTHERN COUNTIES BANKRUPTCY PRACTICE

United States Bankruptcy Court  
Northern District of California  
Santa Rosa / Eureka Division

Revised March 8, 2012

## 1. EX PARTE APPLICATIONS

Ordinarily, ex parte applications shall be submitted electronically and without oral representations by counsel. However, if a request is unusual and counsel feels the need to explain or justify it to the Court, he or she may request that it be called in open court at the conclusion of any law and motion or relief from stay calendar. If time is critical, the Court may convene specially.

Counsel are reminded that all rules concerning notice of ex parte applications (e.g. FRCP 65(b)(2), FRBP 4001(a)(3)) are strictly enforced.

## 2. OBTAINING CALENDAR DATES

The court issues hearing dates several months in advance. Generally, law and motion matters are heard in Santa Rosa every Friday at 9:00 and 10:00; final accounts and fee applications are heard every Friday at 10:30; relief from stay motions are heard every second and fourth Thursday at 9:00; Chapter 13 matters are heard the second and fourth Wednesdays at 1:30; and scheduling conferences are held the fourth Monday at 2:00. All Eureka matters are generally heard on the first Wednesday of each month at 9:00. Eureka matters may be heard in Santa Rosa with the consent of all parties or by order of the court.

The above are only general guidelines, and are frequently changed to accommodate holidays, unavailability of judges, etc; counsel should consult the posted calendar or contact the calendar clerk to confirm a particular date. Calendar dates are also available on the court's website at <http://www.canb.uscourts.gov>.

Counsel need only confirm that court will be held on a desired date. It is not necessary to reserve a date or obtain leave to have a matter placed on the calendar.

## 3. STAY RELIEF MOTIONS

Pursuant to Local Rule 4001-1(c), notice of 14 days is required for motions for relief from the automatic stay.

Final hearings are set by the Court if it appears that there is a disputed issue of material fact. Parties are not permitted to stipulate to a final hearing. At the final hearing, direct testimony is usually in the form of declarations filed and served at least five days before the hearing. Declarants are to be available in court for cross-examination unless the other side has waived the right to cross-examine.

#### 4. OBJECTIONS TO CLAIMS

Unless otherwise ordered, all hearings on objections to claims are preliminary hearings, without testimony. If the objection cannot be summarily resolved, the court will order a trial at which evidence will be taken.

#### 5. PRETRIAL and SCHEDULING CONFERENCES

Unless otherwise ordered, all pretrial and scheduling conferences are very informal proceedings and do not require written reports or briefs. However, each party not appearing pro se must be represented by counsel who knows about the case and is prepared to discuss its merits as well as appropriate dates for discovery and trial.

Telephonic appearances are not permitted at scheduling conferences. However, they may be heard by conference call if arrangements are made by calling the calendar clerk well in advance of the scheduled date. See section 7 below.

#### 6. ORDERS AND JUDGMENTS

Except for orders submitted by pro se parties, all orders (and judgments) in this division must be submitted electronically. Registered ECF Participants may choose to upload the order via CM/ECF or submit it by email. **DO NOT SUBMIT ORDERS BOTH WAYS. CHOOSE ONE OR THE OTHER.** Counsel who are not Registered ECF Participants may submit only by email.

##### **A. Orders by Email**

Orders submitted by email shall be sent as an attachment to an email to [Chambers.Orders@canb.uscourts.gov](mailto:Chambers.Orders@canb.uscourts.gov). The attachment must be in WordPerfect format (preferred) or MS Word format. The email must contain the following information, in the following order, in the subject line: Hearing date (mm/dd/yy), debtors' name (abbreviations OK), case number, and title of order. For example:

01/26/11 Harrington 11-12365 Order for Relief From Stay

If the order has a signature line for approval by another party, make sure that “/s/” appears on the signature line. If there is no signature line for party approval, you may certify approval in the body of your email provided that the approving counsel is copied with the email.

The court is unable to sign email orders with separate attachments. If your order requires an attachment, either incorporate it into the order as a single document or upload it via CM/ECF.

##### **B. Orders Uploaded Via CM/ECF**

The court never prints an order. Therefore, if you upload an order through CM/ECF it may contain NO BLANKS. If your order requires the Judge to add dates or anything else, submit it by email. Also, do not put the word “Proposed” in the caption.

Counsel are reminded that since uploaded orders are electronically signed in the upper right corner of the first page instead of at the end, such orders may not contain a blank signature line for the Judge or a date line. Instead, court rules applicable to all divisions require that “\*\*END OF ORDER\*\*” be placed at the end of all uploaded orders.

### **C. When in Doubt**

When in doubt, submit your order by email. The Judge can make changes and corrections as necessary. He only has two choices as to uploaded orders: sign or bounce.

### **D. Orders After Notice Without Hearing (L.R. 9014-1(b)(4)):**

First, file and docket your request electronically. Then email an order in .wpd or .doc format to Chambers\_Orders@canb.uscourts.gov. Either attach a copy of the request to your email or recite in the body of the email that you have filed a request for the order.

### **E. Stipulations and Ex Parte Orders**

Stipulations and applications for ex parte orders (including applications for the employment of professionals) should be attached to an email sent to Chambers\_Orders@canb.uscourts.gov as a single document with a single caption in either .wpd or .doc format. All attorney signature lines should be dated, and signatures should be indicated either by “/s/” or an attorney’s signature graphic. The other parties to a stipulation (or the U.S. Trustee, for employment and other ex parte applications) should be copied with the email.

## **7. TELEPHONIC CONFERENCES AND APPEARANCES**

### **A. Definitions**

A conference call is a call placed by a party using the conference call operator. The call is placed at a special time designated by the calendar clerk. Conference calls are NOT held during normal court calendars.

A telephonic appearance is an appearance by telephone during a regular court calendar.

### **B. Conference Calls**

Because of the wide geographic area of this division, the Court encourages the use of conference calls and will usually order hearings to be held by telephone at the request of a party if counsel cannot so stipulate. Conference calls are discouraged only when one party is in pro per. In-house conferencing systems may not be used in lieu of the conference call operator. All conference calls must be arranged through Tara Arruda by telephone at 707 547-5920 or by email at Tara\_Arruda@canb.uscourts.gov. It is the responsibility of the plaintiff in status conferences and the moving party in other matters to arrange the conference call.

### C. Telephonic Appearances

To request a telephonic appearance, call the CourtCall reservation line at (866) 582-6878. The request must be made at least 48 hours (exclusive of weekends and holidays) before the hearing. To learn more about the CourtCall procedures go to the web site; [www.courtcall.com](http://www.courtcall.com).

Only attorneys who file electronically (ECF Registered Participants) may appear telephonically. Attorneys representing themselves may not appear telephonically. If the attorney appearing by phone does not respond immediately when the case is called, the matter will be deemed submitted.

### D. Limitations

Telephonic appearances or conference calls are generally not permitted in discovery disputes, contested disclosure statement hearings, or hearings on orders to appear or orders to show cause where the order does not permit a telephonic appearance without leave of court. Exceptions can be granted only by the Judge upon ex parte application.

## 8. CONTINUANCES

Motions directed to specific parties may be continued as allowed by local rules or by stipulation at any time. Before the date of the hearing, the calendar clerk is to be notified; on the date of the hearing, the courtroom deputy is to be notified. The moving party is to file and serve a notice of the continued hearing; if he or she fails to do so, the motion may not be granted by default if the other side fails to appear at the continued hearing.

Motions or applications noticed to creditors generally, such as sales of assets, motions to convert, etc., may be continued only on the record at the time set for hearing in the notice. Appearance for this purpose may be by telephone in accordance with the procedure set forth above.

Trials will be continued very reluctantly, and only for the most compelling reasons, such as serious illness or death. Virtually all matters set for trial are given a date certain at a time and date when no other matters are set, so counsel should assume that the case will be called at the exact time set.

## 9. ELECTRONIC FILING REQUIRED

This court is entirely electronic, and does not maintain paper files. **All pleadings in this division shall be filed electronically** with ONLY the following exceptions:

1. Attorneys or law firms which did not file any pleading in this division in the previous calendar year may file ONE pleading in paper in this calendar year. If the pleading is more than 10 pages in length, it shall be accompanied by a disk containing the entire pleading in .pdf format.

2. Pro se litigants. Provided, however, that any pleading subsequent to the lead documents in a new case in excess of 10 pages and any pleading filed within seven calendar days of a prior filing shall be accompanied by a disk containing the entire pleading in .pdf format.

**Leave to deviate from the above requirements** may be granted only by the Judge upon application with proposed order emailed in .wpd or .doc format to Chambers\_Orders@canb.uscourts.gov. Lack of computer equipment, computer illiteracy, or lack of ECF training will generally not be valid excuses.

**When an attorney or party attempts a filing in violation of the above requirements**, the following procedure shall be followed:

1. The purported pleading will be scanned by the Clerk and filed unless it is so lengthy as to be burdensome, in which case the Clerk shall immediately obtain an order striking a portion of the pleading and shall scan and file the remainder.

2. The Clerk shall issue an Order to Show Cause why the pleading should not be stricken and the filer sanctioned. The hearing date shall be the next law and motion calendar which is more than five days from the issuance of the OSC. No telephonic appearances will be allowed.

3. If the court disallows the filing, an order will be issued striking the pleading from the record.

4. If the court conditions the filing on payment of a fine and the fine is not paid within three court days, the pleading will be stricken from the record.

**There is no requirement in this division for submission of a paper “chambers copy” of an electronically-filed pleading.**

## 10. RULE 2002 NOTICES TO CREDITORS

Notices are governed by Local Rule 2002-1.

Litigants who for some reason cannot use the mailing labels must apply for a special order allowing them to give notice. Any motion or application noticed without using the mailing labels or obtaining special leave of court will be summarily dropped from the calendar.

Final fee applications shall be noticed by the court along with the notice of confirmation in Chapter 11 and Chapter 12 cases, and along with the notice of the trustee's account in Chapter 7 cases.

No interim fee application will be approved unless all professionals in the case were given the opportunity to seek interim compensation and all of their applications were listed in the same notice. Hearings may be set on any law and motion calendar, so long as 21 days notice was given. No application for compensation will be approved unless it was on file when the creditors received the notice.

## 11. SALES FREE AND CLEAR OF LIENS

The term "free and clear of liens" shall be used only in reference to specific, identified liens which are not to be paid out of escrow. No motion to sell free and clear of liens will be considered unless the liens are specifically identified, the ground for sale free and clear under section 363(f) has been identified for each such lien, and each lienholder has been given 28 days notice of the hearing (unless time has been shortened) and has been served pursuant to FRBP 7004. Local Rule 6004-1 is strictly enforced.

Even if there are no objections, an actual hearing is always required before the court will authorize a sale free and clear of liens.

## 12. CORRESPONDENCE WITH COURT

Correspondence with the Bankruptcy Judge is rarely appropriate and is discouraged except to the extent absolutely necessary. When in doubt, the preferred procedure for communicating with the Judge is a filed pleading showing proof of service upon all proper parties. Routine filings and inquiries should be addressed to the Clerk of the Court, not the Judge.

## 13. GUIDELINES FOR COMMUNICATION WITH COURT STAFF

Counsel are reminded that Rule 5-300(C) of the California Rules of Professional Conduct specifies that for disciplinary purposes a contact with the judge's research attorney, law clerk or extern is considered a contact with the judge. No attorney or litigant may initiate contact with any research attorney, law clerk, intern or extern unless such contact is clearly not a violation of Rule 5-300(C) or FRBP 9003(a). If a law clerk, extern or research attorney contacts counsel to relay a communication from the judge, counsel may not discuss the case with the caller.

If you have a question regarding the status of an order or submitted matter, you may call 707 547-5900 and your call will be routed to the appropriate deputy clerk. Alternatively, you may email [Chambers\\_Orders@canb.uscourts.gov](mailto:Chambers_Orders@canb.uscourts.gov).

Tara Arruda, the courtroom deputy, is available to assist counsel regarding all calendar matters. She may be called at (707) 547-5920 or emailed at [Tara\\_Arruda@canb.uscourts.gov](mailto:Tara_Arruda@canb.uscourts.gov) regarding routine calendar questions, the availability of the judge for ex parte applications and emergency matters, and the continuance or settlement of calendared matters, as well as arrangement of telephonic appearances and conference calls. Counsel are reminded that copies of the court's calendar of hearing dates for the next several months are available on the court's website and that it is not necessary to reserve a spot before noticing a motion.

Counsel are reminded that the judge does not appreciate ex parte applications made by proxy through a member of the court staff. If you want an order shortening time, apply for it; don't ask the courtroom deputy if the judge is willing to shorten time.

#### 14. SUBMITTED MATTERS

The Court almost always renders decisions on submitted matters within ten days of the hearing. Counsel are encouraged to contact the Clerk's office staff at 707 547-5900 about the status of any matter under submission for more than ten days, to make sure that it has not "slipped through the cracks." You may also email Chambers\_Orders@canb.uscourts.gov.

#### 15. CHAPTER 11 FINAL DECREES

Chapter 11 debtors in possession and trustees are expected to apply for final decrees as soon as claims disputes and any other litigation in bankruptcy court are resolved. It is not proper to wait until all payments are made before applying for a final decree. The court expects all counsel for Chapter 11 debtors to understand fully the provisions of FRBP 3022 and the Advisory Committee notes thereto.

If a final decree is sought within one year of confirmation, it may be obtained by ex parte application along with a declaration of a principal of the debtor setting forth the date that the plan was confirmed and representing that the plan payments called for by the plan have been commenced and that the debtor is substantially in compliance with the requirements of the plan.

If more than one year has passed since confirmation, a final decree must be sought by motion on at least 15 days notice to the creditors' committee and its counsel, if any, the U.S. Trustee, and any persons who filed requests for notice. If there is no committee, the 20 largest unsecured creditors must be served. The motion must contain the following statement, in capital letters:

**IF THE DEBTOR IS NOT CURRENT IN PLAN PAYMENTS, YOU MAY OBJECT TO ENTRY OF A FINAL DECREE AND ASK THE COURT TO ORDER THE LIQUIDATION OF THE DEBTOR'S ASSETS. IF THE DEBTOR FALLS BEHIND IN PLAN PAYMENTS AFTER THE ENTRY OF A FINAL DECREE, YOU MAY ASK THE COURT TO REOPEN THE CASE AND ORDER LIQUIDATION.**

If a motion to reopen a case is made, the filing fee shall be paid by the debtor unless the court finds that the motion was not substantially justified.

#### 16. EFFECT OF THESE RULES

These rules shall be considered standing orders of the court, modifiable for cause upon ex parte application.