UNITED STATES BANKRUPTCY COURT
for the
NORTHERN DISTRICT OF CALIFORNIA

PRACTICES AND PROCEDURES

Honorable Cara Masako Porter
United States Bankruptcy Judge

In addition to enforcing the Bankruptcy Local Rules for the Northern District of California ("BLR"), the Civil Local Rules of the United States District Court ("Civil LR") and the Federal Rules of Bankruptcy Procedure ("Rules"), Judge Porter's PRACTICES AND PROCEDURES are intended to assist counsel with practical procedures for litigation in her courtroom. Counsel and litigants appearing before the Court therefore should be aware of the following:

1. General Provisions

Counsel are expected to consult and comply with all provisions of the BLR and Rules relating to motions, briefs, continuances, and all other matters. The failure to comply with any of the rules and orders may be deemed sufficient grounds for monetary sanctions, dismissal, entry of default, or other appropriate sanctions.

2. Communication with the Court

Ex parte communication with the Court, including contact with the judge's staff or law clerks, is not permitted. Rule 9003(a); Model Rule of Professional Conduct 3.5; California Rule of Professional Conduct 3.5(b).

The proper means of communicating with the Court is through Courtroom Deputy Ms. Ruby Bautista [(510) 879-3529; Ruby_Bautista@canb.uscourts.gov]. Ms. Bautista will respond to calendaring questions, order status, and requests for expedited hearings. When contacting Ms. Bautista, parties and counsel should identify their telephone numbers and e-mail addresses. Parties and counsel should not contact the Court or chambers staff directly. This prohibition extends to e-mail, telephone, and fax.

Please also note ¶ 10 below regarding communication with court staff regarding submission and status of orders.

3. Appearances

Judge Porter conducts hearings in three ways:

(1) remote hearings conducted by videoconference (e.g., by Zoom or equivalent), in which there are no personal appearances in the courtroom;

(2) hybrid hearings, in which each party or counsel can elect to attend in person in the courtroom or by videoconference; and

(3) in-person hearings, which requires parties and counsel to appear in the courtroom, subject to prior exception approved by the court.

Litigants and interested parties should refer to Judge Porter's Open Calendar Procedure and Available Dates for Open Calendaring, which are posted to the court's website, to determine whether a particular calendar will be conducted in-person and/or by videoconference.[1]

Parties shall comply with Judge Porter's Procedures for Noticing and Conducting Hearings.

4. Calendaring Matters

Please refer to Judge Porter's Open Calendar Procedure and Open Calendar Dates, available on the court's website.

A. General Calendaring

The Court utilizes an Open Calendar Procedure for most regularly noticed hearings. Details are available Judge Porter's Open Calendar Procedure. For hearings that are not shown on the Open Calendar Procedure or for questions about the Open Calendar Procedures, contact Courtroom Deputy Ms. Ruby Bautista [(510) 879-3529; Ruby_Bautista@canb.uscourts.gov].

When noticing and participating in hearings, all parties, counsel, and other interested parties shall comply with Judge Porter's Procedures for Noticing and Conducting Hearings.

B. Expedited Matters

A party seeking an order shortening time must comply with BLR 9006-1, particularly 9006-1(c). If a request is made by motion, a party must file an application for an order shortening time that complies with Rule 9006(c) and BLR 9006-1, together with a copy of the moving papers. The application should include a declaration describing the movant's efforts to obtain the consent of the opposing party to shorten time, and it should indicate a suggested hearing schedule, opposing party's position on the suggested hearing schedule, and the movant's proposal for providing notice to affected parties.

Judge Porter does not require an order shortening time on a motion for interim authority to use cash collateral or to obtain credit. See FRBP 4001(b)(2) and (c)(2). She also does not require orders shortening time for "first day" motions filed with or immediately after a Chapter 11 petition.

To obtain a date and time for a hearing on shortened time outside the available dates posted on the Open Calendar, for the initial hearing on a motion to use cash collateral or obtain credit or a Chapter 11 first day motion, counsel should contact Courtroom Deputy Ms. Ruby Bautista [(510) 879-3529; Ruby_Bautista@canb.uscourts.gov].

The movant should upload an order that (a) sets the date and time of the hearing, (b) establishes requirements for notice to affected parties, and (c) indicates how opposition to the motion should be made. Written opposition to a motion made on shortened time generally is not required to be filed prior to the first hearing, and a party generally may appear at the hearing to oppose the motion orally. If shortening time is merited and entry of an order is appropriate, the Court will issue an order.

[1] https://www.canb.uscourts.gov/judge/porter/calendar

C. Temporary Restraining Orders ("TROs")

Requests for temporary restraining orders will only be calendared after an adversary complaint has been filed. The request for TRO should include a declaration attesting that the moving party has given notice to, and served the moving papers upon, opposing parties at least 72 hours in advance of the hearing. Alternatively, the movant should submit a declaration describing the movant's efforts to accomplish such notice and service, and why those efforts were unsuccessful. No order shortening time is necessary. To obtain a date and time for a hearing on a request for a TRO, counsel should contact Courtroom Deputy Ms. Ruby Bautista [(510) 879-3529; Ruby_Bautista@canb.uscourts.gov].

5. Continuances

A. Unopposed Continuances

Motions directed to specific parties may be continued as allowed by the BLR or by stipulation. Courtroom Deputy Ms. Ruby Bautista must be notified 72 hours in advance of any scheduled hearing of such continuance. The moving party shall file and serve a notice of the continued hearing. If the moving party fails to file a notice of the continued hearing by the time of the hearing, the motion may be denied for lack of prosecution.

Motions or applications noticed to creditors generally – including asset sales, motions to convert or dismiss, etc. – shall be continued on the record at the time set for hearing in the notice. Courtroom Deputy Ms. Ruby Bautista must be notified 72 hours in advance of such continuances.

B. Opposed Continuances

A party requesting a continuance that is opposed must comply with BLR 9006-1.

C. Trials

Generally speaking, trials will not be continued for anything less than a compelling reason. 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 BLR 9006-1. The agreement of parties to continue a trial does not bind the Court.

6. Chambers Copies

Chambers copies are not required unless requested by court staff.

7. Format of Electronic Documents

A. Text-Searchable Portable Document Format

Electronic documents should be in text-searchable portable document format (PDF) while maintaining the original document formatting. In instances where the electronic filer of the document was not the original drafter (e.g. exhibits submitted as evidence) and the circumstances reflect that a document cannot practicably be converted to a text-searchable PDF, the document may be scanned or converted to non-text-searchable PDF. The electronic filer is responsible for ensuring that any document filed is complete and readable.

B. PDF Page Labels

To facilitate efficient review of electronically filed briefs, all briefs submitted in zPportable document format (PDF) should include PDF page labels that correspond to the page numbers printed on the document itself. For example, where the caption is on PDF page 0, a table of contents and table of authorities is on pages i to iii, and the text of the brief is on pages 1 to 10, the PDF page labels should match 0, i-iii, and 1-10.

The page number for the cover page may be suppressed and need not appear on the cover page.

An electronic filer is not required to use a specific vendor, technology, or software for creation of a document for filing. Nonetheless, for instructions on creating page labels in Adobe Acrobat Pro, if an electronic filer chooses to use that application, can be found on the court's website at Creating Page Labels in Adobe Acrobat Pro.

C. Bookmarking

An electronic bookmark is a descriptive text link that appears in the bookmarks panel of an electronic document. Each electronically filed brief or memorandum of points and authorities should include an electronic bookmark to (i) the "Top" of the document, (ii) each heading and subheading, and (iii) the first page of any component of the document, including any table of contents, table of authorities, verification, declaration, proof of service, exhibit, or attachment. Bookmarks for subheadings and subdivisions of documents should be properly nested to reflect the hierarchical structure of the document.

All briefs and memoranda of points and authorities in support, opposition, or reply to a motion filed by electronic filers that exceed 10 pages of substantive argument (i.e. excluding the caption page, table of contents, table of authorities, and proof of service) should include bookmarks.

Where bookmarks appear, each electronic bookmark must briefly describe the item to which it is linked. For example, an electronic bookmark to a heading must provide the text of the heading; an electronic bookmark to an exhibit or attachment must include the letter or number of the exhibit or attachment, and it may also include a brief description of the exhibit or attachment.

D. Referencing Pages of an Electronically Filed Document

When referring to page numbering in briefs (for example, an opposition that refers to the motion), please reference the page number printed on the page (which should also match the page labeling applied through Adobe Acrobat, or equivalent application) and line number.

For example, an opposition brief filed in response to the motion filed at Docket No. 3 might reference “Dkt. 3 at p. 10,” meaning the page of argument labeled as “page 10,” which is not necessarily the tenth page of the PDF.

8. 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. 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.**

Employment orders should reflect that fees and expenses are subject to court approval and any request for allowance and payment of such fees is subject to the court’s Guidelines for Compensation and Expense Reimbursement of Professionals and Trustees, available on the court’s website. If the debtor is paying a post-petition retainer, the applicant should provide scream-or-die notice (*see* BLR 9014-1(b)(3)) of the retainer to all creditors.

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.

9. 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 BLR 1001-2(a) and Civil LR 37-1(a) and (b).) Parties should comply with the procedures set forth in Civil LR 37-1, particularly with respect to required conferences and meet and confer rules. (See Civil LR 1-5(n).) For purposes of Civil LR 1-5(n), references to *telephonic communications* include *communications via videoconference*.

If the parties fail to resolve a discovery dispute, a party may file a letter brief of no more than five (5) pages to the Court via CM/ECF. The letter brief must address the party’s efforts to meet and confer with the opposing party. Do not include exhibits with letter briefs. Absent leave of court, letter briefs in excess of five (5) pages or exhibits submitted with a letter brief may not be considered.

After reviewing the letter brief, Judge Porter will decide how to respond, whether to issue an order, hold a telephonic conference, schedule a hearing, request a response or more information, or otherwise.

Any request for sanctions relating to a discovery dispute must be made by separate noticed motion. Rules 7037 (incorporating Federal Rule of Civil Procedure 37(a)), 9014, 9020.

10. Submission of Orders

Counsel should comply with the provisions of BLR 9021-1 and 9022-1, except as updated through amendments to the Federal Rules of Bankruptcy Procedure, effective December 1, 2024. Consistent with the Notice re Proposed Orders Filed with Motions and the District’s E-Order Submission Procedure, counsel should comply with the following guidance:

1. Uploaded orders should be converted to PDF electronically, not scanned.

2. For stipulations, **do not** upload the stipulation and order for signing together. Both documents should be filed separately under ECF and E-orders, respectively. Orders approving stipulations should either (a) state only that the stipulation filed at [ECF Docket No.] is approved; or (b) if the order recites the provisions of the stipulation, the order to be signed must include approval as to form from all parties to the stipulation on the face of the order.

3. Court Service List: Judge Porter directs the parties' attention to the Notice to Bar regarding Enforcement of Service List Rule. For all orders granting relief against an individual debtor, the court service list should contain the name and address of the debtor, even if his or her counsel is a registered CM/ECF participant or otherwise on the court service list.

Occasionally counsel desire expedited handling of orders in the case of bona fide emergencies (e.g., sale of property; issuance of a temporary restraining order). After such an order has been uploaded into the ECF system, counsel may notify chambers via e-mail to the Ms. Ruby Bautista [(510) 879-3529; Ruby_Bautista@canb.uscourts.gov], with a subject line that complies with the format provided below. Do NOT send the order itself to the e-mail address.

"URGENT ORDER || [case number] || [docket number and name of the motion]"

When counsel needs to advise the court about a matter pertaining to a submitted order (e.g., that opposing counsel has agreed to the form; that opposing counsel has disagreed as to the form and will submit an alternate form; etc.), they may notify chambers by contacting Courtroom Deputy Ms. Ruby Bautista [(510) 879-3529; Ruby_Bautista@canb.uscourts.gov], with a copy to opposing counsel and other parties as appropriate. Alternatively, counsel may docket (as a separate document) a letter with proof of service in CM/ECF (Bankruptcy/Miscellaneous/Document: include in the text "Letter to Court regarding proposed order"). A letter so docketed will become and remain a permanent part of the record in the case. Please notify Ms. Bautista when the letter is docketed.

11. Adversary Proceedings

A. Scheduling Conferences

Adversary proceedings are governed by scheduling orders entered by the Court under Rule 7016(b) (incorporating Federal Rule of Civil Procedure 16).

Pursuant to the Order Setting the Scheduling Conference, case management conference statements must be filed at least 7 days before each conference and continuances must be requested in writing at least 7 days prior to the conference date. Initial Scheduling Conferences are in-person hearings. Continued Scheduling Conferences are remote hearings, unless otherwise ordered or agreed.

The Court may set matters for trial at the Initial Scheduling Conference or any continued Scheduling Conference. Short cause matters (e.g., actions for credit card abuse under 11 U.S.C. § 523(a)(2)) are likely to be set for trial immediately.

Parties may stipulate to continue the Initial Scheduling Conference for up to 60 days, to occur on another Initial Scheduling Conference calendar. Any such stipulation must be filed no less than 7 days prior to the Initial Scheduling Conference. Appearance at the Initial Scheduling Conference is not necessary so long as a signed order continuing the matter is docketed on the Court's ECF system in advance of the hearing. If no order is docketed, the parties should appear.

B. Trials

In connection with trial setting and evidentiary hearings, the parties are advised to review Judge Porter's form Trial Scheduling Order, available on the Court's website. The form order indicates the kind of matters (e.g., discovery cut-off, expert reports) for which deadlines are appropriate and will be set. Counsel should be prepared to advise the Court regarding their availability for trial. See ¶ 5 above regarding trial continuances.

C. Default Judgments

Prior to consideration of a request for entry of default judgment, plaintiff shall obtain entry of a clerk's default. The request for entry of the clerk's default must be served on any non-responding defendant and proof of such service must be filed.

Except in certain matters (e.g., trustee avoiding actions, 11 U.S.C. § 523(a)(2)(c) cases, and others as determined on a case-by-case basis), a plaintiff seeking a default judgment must 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 28 days prior to the hearing. Any witnesses for the plaintiff must appear personally; the defaulting defendant is entitled to cross-examine any witness but is not permitted to present its own evidence or witnesses. The court will consider declarations only if the defaulted defendant agrees.

12. Chapter 11 Cases

[Note: This section does not apply to cases under the Small Business Reorganization Act of 2019 (new Subchapter V of Ch. 11), eff. February 19, 2020]

A. Status Conferences

The Court calendars regular conferences on the status of each pending Chapter 11 case and issues a Chapter 11 Status Conference Order and Notice of Possible Conversion or Dismissal. All Chapter 11 debtors are required to file a Status Conference Statement at least 7 days prior to the conference that addresses the items set forth the Chapter 11 Status Conference Order.

B. Disclosure Statements

The Court follows BLR 3017-1 and does not issue tentative approval of disclosure statements, unless Rule 3017.1 applies and the proponent so requests. The proponent of a disclosure statement shall inform the Courtroom Deputy Ms. Ruby Bautista via phone or email at least 3 days prior to the hearing to approve a disclosure statement if the party intends to go forward with the hearing. Failure to notify the Court shall result in the removal of the disclosure statement hearing from the calendar.

C. U.S. Trustee Motions to Convert or Dismiss

Once he has filed a motion to convert or dismiss a chapter 11 case, the United States Trustee is directed not to withdraw that motion without advance approval of the Court.

D. Final Decree in Chapter 11 Cases

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. The Court expects all counsel for Chapter 11 debtors to understand fully the provisions of Rule 3022 and the Advisory Committee notes thereto, and BLR 3022-1.

13. Cases Under the Small Business Reorganization Act of 2019 (Subchapter V of Ch. 11), effective February 19, 2020

Unless otherwise ordered, Debtors in cases under the Small Business Reorganization Act of 2019 (Subchapter V of Ch. 11) shall comply with the court's Order Setting (A) Status Conference; (B) Claims Bar Date; (C) Deadline for Election Under 11 U.S.C. § 1111(b)(2); and (D) Other Deadlines, which will be issued by the Clerk of Court immediately following the filing of a voluntary petition for relief under Subchapter V or immediately following the entry of an order for relief in involuntary cases under Subchapter V. The Court expects debtors and counsel to be familiar with and to comply with Subchapter V, as well as with the other relevant provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and Bankruptcy Local Rules.

After holding a status conference required by 11 U.S.C. § 1188(a), the court will issue an Order After Status Conference Establishing Confirmation Procedures ("Order After Status Conference"). The deadlines and procedures in the Order After Status Conference will be discussed at the status conference. As set forth in detail in the Order After Status Conference, the court will hold a Plan Review Conference after the filing and serving of a plan but before the confirmation hearing. The purpose of the Plan Review Conference is to consider the form of the plan and whether it contains the mandatory provisions required by the Bankruptcy Code. The use of the District's Plan of Reorganization for Small Business Debtor Under Chapter 11, Subchapter V form plan is mandatory. If the plan contains all the necessary information required by the Bankruptcy Code and contains no material typographical and mathematical errors, the court will set a confirmation hearing and related deadlines at the Plan Review Conference. If debtor files a plan prior to the status conference and wants the Plan Review Conference to be held at the same time as the Status Conference, please contact the Courtroom Deputy immediately following the filing of the plan. Debtors should not notice a confirmation hearing prior to the Plan Review Conference, and any such hearings will be dropped by the court.

14. Chapter 13 Plan and Procedures

The court requires use of the district's form Chapter 13 Plan implemented on January 1, 2023, for cases filed or after that date.

Parties are expected to comply with the Order re Joint Pre-Hearing Conference Statements on Objections to Confirmation of Chapter 13 Plans.

For cases pending as of January 1, 2023, and in which a plan has been confirmed, the court requires any proposed modified plan to use the form plan in effect as of the date of the filing of the case.

The court requires debtors to file only annual declarations attesting to Direct Secured Debt Obligations, as described in section 9.1 of the January 1, 2023, form plan. Such declarations need not introduce or authenticate documentary proof of the payments to which the declaration attests, but debtors should understand that declarations lacking such proof might not be sufficient if a factual dispute arises.

15. Fee Applications

A. Chapter 7 Cases

If there are no timely objections on file either to the final account or fee request of a Chapter 7 trustee or the fee applications of any of the trustee's professionals, there is no need for the trustees or the professionals to appear at the scheduled hearing unless otherwise directed by the Court. For pending objections, the party whose account, request or application is the subject of the objection should appear.

B. 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 (available on the court's website) does not specifically apply to fee applications in Chapter 13 cases, Judge Porter does require counsel in Chapter 13 cases to provide their clients with the letter described in that Guideline.