

## Judicial Procedures Survey for the Honorable Roger L. Efremsky

In 2014, 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 the responses from 2014. 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.

### I. CALENDAR HEARINGS

Questions	Response
1. 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
2. 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 – please contact the Courtroom Deputy

### II. 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 – Ch 11 First Day matters (no OST required) TROs are generally heard on at least 72 hours notice (no OST required) All other matters require an OST and compliance with B.L.R. 9006-1(c).
2. If so, who is the point of contact for arranging for consideration of emergency motions?	Courtroom Deputy: Ms. Monica Burley, 510-879-3541 or monica_burley@canb.uscourts.gov

3.	Does the judge calendar a hearing on an emergency motion prior to receipt and review of moving papers?	No.
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?	Yes
5.	Does the judge act on emergency motions without requiring notice to any party whatsoever?	Only where the Bankruptcy Code or Rules (e.g. FRBP 4001(a)(2)) permit such action.
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?	Yes, as required by B.L.R. 9006-1(c)
8.	Does the judge grant orders shortening time for hearings (other than emergency matters) upon a showing of good cause?	Yes, provided the requesting party complies with B.L.R. 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) Yes (b) OST not necessary (c) Yes (d) OST not necessary (e) Most other matters for good cause shown or on stipulation of the parties

### III. HEARINGS & TELEPHONIC APPEARANCES

Questions	Response
1. What matters, if any, will the judge <b>not</b> allow telephonic appearances? (a) Disclosure Statement & Confirmation Hearings (b) Evidentiary Hearings (c) Other matters (please specify)	(a) Debtor and Debtor's may not appear by telephone. (b) No party may appear by telephone (c) When client is present in court, counsel may not appear by telephone.
2. Does the judge consider priority requests from counsel at the time of calendar call?	Yes
3. Does the judge hear stipulations and uncontested matters and requests for continuances before hearing opposed matters?	Yes

### IV. PROCESSING ORDERS

Questions	Response
1. Does the court require an order to be approved as to form prior to being submitted?	Either approved as to form or served in accordance with B.L.R. 9021-1(c).
2. If not, does the court lodge an order for 7 days under LBR 9021-1 (c)?	The rule says that orders not approved as to form will "ordinarily" be lodged for seven days

<p>3. 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) No.</p> <p>(b) Objector should email law clerks (<a href="mailto:jane_fabian@canb.uscourts.gov">jane_fabian@canb.uscourts.gov</a> and <a href="mailto:shannon_mounger-lum@canb.uscourts.gov">shannon_mounger-lum@canb.uscourts.gov</a>) and cc: opposing party. Email should attach a copy of the letter and any competing orders the parties want the court to consider.</p> <p>(c) No. Upon receipt of letter, Court will contact parties if conference call is necessary.</p> <p>(d) Option (b) only.</p>
<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?</p>	<p>ECF, but counsel will be required to serve by mail if more than twenty-five parties will be receiving electronic notice.</p>
<p>5. What are the judge's procedures when parties cannot agree on the form of the order?</p>	<p>See No. 3, above.</p>
<p>6. How long should counsel or parties wait before contacting the staff regarding the status of a lodged order?</p>	<p>Three days after the seventh day that the order has been lodged.</p>
<p>7. Does the judge permit attorneys and parties to communicate with the law clerk regarding rejected proposed orders?</p>	<p>No.</p>

**V. JUDGE'S COPIES OF FILED DOCUMENTS**

<b>Questions</b>	<b>Response</b>
<p>1. Does the court require courtesy copies of pleadings filed in the case?</p>	<p>Yes, where the filings relate to scheduled hearings (on motions for relief from stay, the Court does not want copies of exhibits unless specifically requested).</p>
<p>2. Are there exceptions to this rule, e.g. relief from stay motions?</p>	<p>See above</p>

## VI. 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) See section V(6). (c) Yes, unless required otherwise, such as the three-day notices in B.L.R. 3017-1 (b) and 3020-1(c) or in the Judge's Trial Scheduling Order.
2. Does the judge permit attorneys and pro per parties to communicate with the judge's law clerks regarding: (check where appropriate) (a) Scheduling matters (b) Status of orders (c) Other matters (please describe)	(a) No, but contact with the courtroom deputy (Ms. Monica Burley) is permitted. (b) No. (c) Only to report settlement or resolution of a pending matter, to provide the three-day notice that a plan or DS hearing is going forward, to provide notice that a trial is going forward, to object to a form of a submitted order, or pursuant to a specific court order or directive to do so.

## VII. STATUS CONFERENCES

Questions	Response
<b>Chapter 11 Cases:</b>	
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?	Possibly

6.	Can the status conference be continued? If so, can what is the preferred method for doing so?	Because the status conference is noticed to all creditors, continuances in advance are not normally permitted.
7.	Does the judge impose sanctions for failure to file the status conference report?	No hard and fast rule on this.
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?	Yes. Generally prepared by Debtor's counsel, sometimes prepared by the Court.
<b>Adversary Proceedings:</b>		
9.	Are status conference statements required? If so, when are they due?	Yes. Seven days prior to the hearing.
10.	Are the required contents of the statement set forth in the judge's order setting the status conference?	No.
11.	Does the judge impose sanctions for failure to file the status conference statement?	No hard and fast rule. Depends on facts of case.
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?	Only occasionally at the first status conference.
14.	Does the judge require the parties to file a discovery plan?	The court expects the parties to develop a discovery plan. It does not need to be filed, but merely outlined.
15.	Can the status conference be continued? If so, what is the preferred method for doing so, and what, if any, deadlines apply?	If the parties stipulate to a continuance they should select a new date on the open calendar and plaintiff should: (1) notify the courtroom deputy by e-mail at least seven days prior to the scheduled date; (2) promptly file a stipulation showing the agreed continued date and time; and (3) upload an order approving the stipulation that includes the continued date and time. Despite agreement by the parties, the continuance is still subject to Court approval.

### VIII. 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. Will the court hear testimony at a final hearing?	Not normally
3. Does the judge grant ex parte relief from stay in unlawful detainer cases?	If ex parte means without notice, then only if FRBP 4001 (a)(2) would apply. If ex parte means on shortened time, yes.
4. Does the judge have special procedures for handling residential relief from stay motions? What are they?	No
5. 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, as long as B.L.R. 9006-1 followed. (b) Yes, as usually the APO permits expedited consideration following default. (c) Yes, as long as B.L.R. 9006-1 followed. (d) Yes, as long as B.L.R. 9006-1 followed. (e) Not likely. (f) N/A (g) When good cause shown, and B.L.R. 9006-1 followed.
6. Does the judge hear relief from stay motions on shortened notice in <b>non-residential</b> unlawful detainer cases?	Yes

7.	Does the judge require declarants to be present in court for final (evidentiary) hearing on motions from relief from the automatic stay?	Only if permission has been granted to present oral testimony at the final hearing.
8.	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
9.	Does the judge grant requests for retroactive annulment of the automatic stay?	Yes

## IX. MOTION PRACTICE

<b>Questions</b>		<b>Response</b>
1.	When does the judge require declarants to be present in court on emergency motions or hearings on shortened time?	No
2.	When does the judge require declarants to be present in court on regularly scheduled motions?	Normally evidence not taken on motion calendar, so declarants' presence not required.
3.	Does the judge require written evidentiary objections to be made in a separate document?	Yes
4.	Can a party continue a motion on its own?	Moving party may continue a motion by filing a notice of continued hearing at least three (3) court days prior to the scheduled hearing.

5.	Can a hearing on a motion be continued by stipulation?	Yes. If the parties stipulate to a continuance they should select a new date on the open calendar, then plaintiff should: (1) notify the courtroom deputy by e-mail at least two court days prior to the scheduled date; (2) promptly file a stipulation showing the agreed continued date and time; and (3) upload an order approving the stipulation that includes the continued date and time.
6.	Does the judge allow true ex parte relief (without notice to the opposing party) when issuing temporary restraining orders?	FRCP 65(b), incorporated by FRBP 7065, applies and describes when a TRO may be issued without notice.
7.	If not, what notice does the judge require?	Normally 72 hour notice is required for an application for a TRO.

#### **X. PROOF OF SERVICE REQUIREMENTS**

<b>Questions</b>		<b>Response</b>
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)	Not normally.

## XI. CONTINUANCES

Questions	Response
1. Does the judge allow for continuances of motions other than by noticed motion or written stipulation?	Yes
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?	On a case-by-case basis.
4. Does the judge permit continuances of disclosure statement hearings or confirmation hearings by stipulation of the parties?	Yes, but since the hearing is noticed to all creditors, continuances in advance are not normally permitted. If, however, Debtors gives written notice to all creditors and sufficient time permits adequate notice, it may be allowed.

## XII. 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. They should be arranged through the courtroom deputy, who will expect an e-mail from the requesting party, with cc: to the opposition, outlining briefly the nature of the dispute.
3. Does the judge hear discovery dispute motions without full compliance with the requirements of Civil Local Rule 37 (a)(1)?	Yes

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
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?	No set deadline

### **XIII. DISCOVERY CUT OFF DATE**

<b>Questions</b>	<b>Response</b>
1. Do you typically set the discovery cut-off date of first Status Conference?	If it is acceptable to the parties.
2. Do you readily approve a stipulation to extend the discovery cut-off date if it do not interfere with the Trial Setting Conference?	Yes
3. Do you strictly enforce a discovery cut-off date absent unreasonable conduct by the opposing party?	Yes

### **XIV. CONVERSION AND RULE 2004 MOTIONS**

<b>Questions</b>	<b>Response</b>
1. What is the minimum amount of notice the judge requires for a FRBP 2004 Examination?	Normally fourteen days.
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?	B.L.R. 1017-1 applies on most conversions from 7 to 13. No hearing required for voluntary conversion to Ch 11 or 12. Voluntary conversion from Ch 11 to Ch 7 does not require a hearing except as set forth in section 1112(a)(1)-(3).

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?	This is handled as a discovery dispute.
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?	Not normally, assuming counsel has adequately explained his or her rationale.
2.	Will the judge confirm a plan prior to a loan modification being finalized, provided creditor is receiving adequate protection payments?	No.
3.	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) Normally if not opposed (b) May, if not opposed

## 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, except with unusually complex financial circumstances.
2. Does the judge prefer that a party use the combined model plan and disclosure statement for corporate Chapter 11 cases?	Yes, for simple case that will not require extensive deviations.
3. Does the judge allow less than 35 days' notice of the hearing on a disclosure statement?	No, except in unusual circumstances. In that case, an order shortening time should be sought.
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?	Yes
6. Does the judge require the plan proponent to submit admissible evidence for the plan confirmation hearing to prove the plan is confirmable?	No. Offer of proof is acceptable for uncontested plans.
7. If so, can the plan proponent do this by offer of proof or by pre-hearing submission of a declaration?	Yes, if plan is uncontested.

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.
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## XVII. DEFAULT JUDGMENT

Questions		Response
1.	<b>When</b> does the judge require admissible evidence in support of a motion for default judgment?	Yes, except for avoidance actions brought by trustees
2.	If so, does the judge require 28 days' notice of such a hearing?	Yes. At the Default hearing the defaulted defendant WILL be allowed to cross-examine witnesses but will NOT be allowed to present oral or documentary evidence.

## 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?	In Trial Scheduling Order issued for each trial.
3.	When are trial dates set by the judge?	At the status conference.
4.	Does the judge hold pre-trial conferences and if so when are those held relative to the trial date?	Yes.
5.	Does the judge require direct testimony from witnesses in party's control to be presented by declaration?	Generally only expert testimony.

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?	If the Court believes it will be more helpful to the Court in making its decision.
7.	Does the judge have published procedures regarding the exchange of declarations in advance of trial?	Yes, in Trial Scheduling 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?	The Court may. Parties are expected to meet and confer about anticipated objections.
9.	Does the judge require the exchange of witness lists before trial?	Yes, in Trial Scheduling Order.
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?	In Trial Scheduling Order
12.	Does the judge have any deadline for bringing motions in limine? If so, when are they set.	Yes, in Trial Scheduling Order.

## **XIX. SETTLEMENT AND MEDIATION**

<b>Questions</b>	<b>Response</b>
1. Does the judge sua sponte order parties to the court's Bankruptcy Dispute Resolution Program?	Only if both sides agree.
2. Does the judge use settlement conferences to encourage disposition of adversary proceedings and contested matters?	Yes – conducted by a neutral third party or other judge.
3. Does the judge use settlement conferences to encourage disposition of Chapter 11 plan confirmation disputes?	Yes – conducted by a neutral third party or other judge.
4. Would the judge act upon request as a settlement judge on the case assigned to him or her as the trial judge?	No