

Judicial Procedures Survey for the Honorable M. Elaine Hammond

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-scheduling" system (in which a range of dates are available for selection without having a date personally from the courtroom deputy)?	<p>Yes. Types of proceedings that may be set using the open calendar procedure:</p> <ul style="list-style-type: none"> • Motions in the main case in Chapter 13 cases: on designated Thursdays at 9:30 a.m. and Chapter 13 confirmation calendars on designated dates. • Motions in the main case in Chapter 7 and 11 cases: on designated Thursdays at 10:30 a.m. • Motions in adversary proceedings: on designated Mondays at 11:00 a.m. • Motions for relief from stay: on designated Fridays at 10:00 a.m. • All available hearing dates are announced in advance and posted in Judge Hammond's calendar section on the Court's website.
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

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
2. If so, who is the point of contact for arranging for consideration of emergency motions?	<p>Anna Rosales (408-278-7581 / anna_rosales@canb.uscourts.gov) or chambers (408-278-7538).</p> <p>Judge requests that moving party contact courtroom deputy or chambers to provide notice that a motion for order shortening time has been filed.</p>
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?	No
5. Does the judge act on emergency motions without requiring notice to any party whatsoever?	May in appropriate circumstances
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?	Depends on matter. If indentifiable opposing party, require declaration consistent with BLR 9006-1.

8. Does the judge grant orders shortening time for hearings (other than emergency matters) upon a showing of good cause?	Yes
<p>9. Does the judge routinely grant orders shortening time for hearings on the following matters?</p> <p>(a) Relief from stay motion in residential unlawful detainer cases</p> <p>(b) Chapter 11 first day motions, including cash collateral hearings</p> <p>(c) Sales of property</p> <p>(d) Applications for temporary restraining orders</p> <p>(e) Other matters (please specify)</p>	<p>(a) These are rarely requested but have been granted in some cases.</p> <p>(b) Yes</p> <p>(c) If appropriate</p> <p>(d) Yes</p> <p>(e)</p>

III. HEARINGS & TELEPHONIC APPEARANCES

Questions	Response
<p>1. What matters, if any, will the judge not allow telephonic appearances?</p> <p>(a) Disclosure Statement & Confirmation Hearings</p> <p>(b) Evidentiary Hearings</p> <p>(c) Other matters (please specify)</p>	<p>(a) Not allowed</p> <p>(b) Not allowed</p> <p>(c)</p>

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?	Begins relief from stay calendar with a request for stipulations. Judge is willing to call stipulations and uncontested matters first on other calendars if the parties notify the courtroom deputy at check in.

IV. PROCESSING ORDERS

Questions	Response
1. Does the court require an order to be approved as to form prior to being submitted?	If requested by opposing counsel.
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)	(a) (b) (c) (d) Prefer (b) or (c). Request parties review electronic recording if available on docket first. If not already on the docket, an electronic recording may be added to the docket upon request of either party.
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?	-Service by ECF only; will provide service by mail on parties heard on matter -Party obtaining order responsible for service on all remaining parties by service of notice of entry of order

5.	What are the judge's procedures when parties cannot agree on the form of the order?	-Telephonic hearing to determine dispute
6.	How long should counsel or parties wait before contacting the staff regarding the status of a lodged order?	5-10 days; depending on whether order required lodging
7.	Does the judge permit attorneys and parties to communicate with the law clerk regarding rejected proposed orders?	Attorneys and parties may communicate with judicial assistant, Raenna Rorabeck, at 408-278-7538.

V. JUDGE'S COPIES OF FILED DOCUMENTS

Questions		Response
1.	Does the court require courtesy copies of pleadings filed in the case?	On website at http://www.canb.uscourts.gov/procedure/hammond/judge-hammonds-policy-chambers-copies
2.	Are there exceptions to this rule, e.g. relief from stay motions?	No

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) Communicate with judicial assistant, Raenna Rorabeck, at 408-278-7538 (c)

<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>(a) Yes</p> <p>(b) Communicate with judicial assistant, Raenna Rorabeck, at 408-278-7538</p> <p>(c)</p>
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VII. STATUS CONFERENCES

Questions	Response
Chapter 11 Cases:	
1. Are status conferences held in Chapter 11 cases?	Yes
2. Are status conference statements required?	Initial status conference statements required; subsequent statements appreciated.
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, at the initial status conference.
5. Will the judge set plan filing deadlines at the status conference?	Yes, although rarely at initial status conference.
6. Can the status conference be continued? If so, can what is the preferred method for doing so?	Yes. If a debtor seeks to continue the status conference prior to the hearing, an application is required stating the basis upon which continuance is requested.
7. Does the judge impose sanctions for failure to file the status conference report?	No

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, the court prepares the scheduling order.
Adversary Proceedings:		
9.	Are status conference statements required? If so, when are they due?	Seven days prior to initial status conference, a discovery plan is required, as set forth in the court's Scheduling Conference Order. Seven days prior to subsequent status conferences, a short statement is requested detailing the status of the adversary proceeding, any issues outstanding from prior status conferences and the proposal for resolving such issues.
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
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?	Yes, although rarely at initial status conference.
14.	Does the judge require the parties to file a discovery plan?	Yes
15.	Can the status conference be continued? If so, what is the preferred method for doing so, and what, if any, deadlines apply?	Parties may file a request to continue the status conference. Court approval of the continuance is required.

VIII. RELIEF FROM STAY MOTIONS

Questions	Response
1. Are appearances required if there is a statement of non-opposition from the debtor and trustee?	Appearances are required from the moving party.
2. Will the court hear testimony at a final hearing?	Yes, depending on the circumstances.
3. Does the judge grant ex parte relief from stay in unlawful detainer cases?	No
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: <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) 	(a) Shortened notice must be requested as set forth in BLR 9006-1. Judge will consider shortened time on basis of (a)-(d). (b) (c) (d) (e) (f) (g)

6.	Does the judge hear relief from stay motions on shortened notice in non-residential unlawful detainer cases?	Judge will consider requests to shorten notice on case-by-case basis.
7.	Does the judge require declarants to be present in court for final (evidentiary) hearing on motions from relief from the automatic stay?	Yes, when set for evidentiary 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, in accordance with 11 U.S.C. §362(d)(4).
9.	Does the judge grant requests for retroactive annulment of the automatic stay?	Yes

IX. MOTION'S PRACTICE

Questions		Response
1.	When does the judge require declarants to be present in court on emergency motions or hearings on shortened time?	Not generally required.
2.	When does the judge require declarants to be present in court on regularly scheduled motions?	Not generally required.
3.	Does the judge require written evidentiary objections to be made in a separate document?	See Civil Local Rules.
4.	Can a party continue a motion on its own?	A party requesting a continuance that is opposed must comply with B.L.R. 9006-1.
5.	Can a hearing on a motion be continued by stipulation?	Yes

6.	Does the judge allow true ex parte relief (without notice to the opposing party) when issuing temporary restraining orders?	In appropriate circumstances.
7.	If not, what notice does the judge require?	Notice by email or fax, if possible, to opposing party.

X. 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

XI. CONTINUANCES

Questions		Response
1.	Does the judge allow for continuances of motions other than by noticed motion or written stipulation?	Yes, by email or telephone call to courtroom deputy at least 24 hours prior to the hearing.
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?	No
4.	Does the judge permit continuances of disclosure statement hearings or confirmation hearings by stipulation of the parties?	Only with court approval.

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. After parties meet and confer, they may contact the courtroom deputy, Anna Rosales (408-278-7581) to request a telephonic hearing. The party requesting a discovery conference should submit a letter brief (no more than 5 pgs.) to the courtroom deputy. Depending on the matter, the judge may also require a short statement of issues from the opposing side.
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?	Yes
5.	Does the general discovery cutoff date include disclosure of expert witnesses?	Yes, unless a separate deadline for experts is set.
6.	What is the deadline for holding a hearing on a discovery dispute motion?	The judge expects a hearing on a discovery dispute motion to be promptly set at the time the motion is filed.

XIII. DISCOVERY CUT OFF DATE

Questions	Response
1. Do you typically set the discovery cut-off date at the first Status Conference?	No
2. Do you readily approve a stipulation to extend the discovery cut-off date if it does 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

Questions	Response
1. What is the minimum amount of notice the judge requires for a FRBP 2004 Examination?	Reasonable notice depending on circumstances and examination requested.
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
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. If necessary, a party may contact chambers staff to provide notice that an objection will be filed shortly.
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?	Yes
2. Will the judge confirm a plan prior to a loan modification being finalized, provided creditor is receiving adequate protection payments?	Yes
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) No, depends on circumstances. (b) Depends on circumstances.

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, unless it would require such modifications as to be misleading or unduly burdensome.

2.	Does the judge prefer that a party use the combined model plan and disclosure statement for corporate Chapter 11 cases?	Parties are welcome to use the combined model plan and disclosure statement if it is appropriate to the case.
3.	Does the judge allow less than 35 days' notice of the hearing on a disclosure statement?	Yes, 14 days' notice by ECF, and by mail on all parties filing requests for special notice but not receiving ECF notice, for tentative approval of disclosure statement, if using the combined model plan and disclosure statement.
4.	Does the judge use a fast track procedure involving preliminary review and conditional approval of disclosure statements without a hearing?	Hearing required but use a fast track process for tentative approval. See above.
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?	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?	In the order confirming the plan.

XVII. DEFAULT JUDGMENT

	Questions	Response
1.	When the judge require a hearing on a motion for default judgment?	Sometimes
2.	If so, does the judge require 28 days' notice of such a hearing?	If hearing is set, 28 days' notice is required.

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 provided in the court's trial scheduling order.
3. When are trial dates set by the judge?	At status conferences.
4. Does the judge hold pre-trial conferences and if so when are those held relative to the trial date?	Pre-trial conferences are held approximately 7 days before trial. Pre-trial conferences are not required in valuation hearings and other limited matters.
5. Does the judge require direct testimony from witnesses in party's control to be presented by declaration?	Direct testimony by declaration is allowed but not required.
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?	Direct testimony by declaration is allowed where credibility of witness is not directly at issue.
7. Does the judge have published procedures regarding the exchange of declarations in advance of trial?	Information is provided in the 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?	No
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?	Judge's procedures are provided in the trial scheduling order, however, procedures are not special.
12.	Does the judge have any deadline for bringing motions in limine? If so, when are they set.	No deadline. This has not been an issue yet.