

## Judicial Procedures Survey for the Honorable William J. Lafferty

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, please consult the Judge Lafferty's Open Calendar Procedures on the Court's website. |
| 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)? | See above.  |
| 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. Please contact my Courtroom Deputy, Dianna Passadore.                                |
| 4. Where are the daily calendars of the judge's hearings posted?  | On the Court's website.   |

## II. TENTATIVE RULINGS

| Questions  | Response  |
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| 1. Does the judge issue tentative rulings?   | Rarely. Occasionally, I will issue a Memo to the parties prior to a hearing, asking that they address a particular issue that I think is important, and was not dealt with in the briefs, or directing the parties attention to a decision that was not cited by either side, that I find instructive or dispositive. |
| 2. How are the tentative rulings made known to the parties?  | If I were to issue a tentative ruling, I would send a document (probably a Memorandum) directly to the parties.   |
| 3. If the tentative rulings are posted on the Court's website, does the judge update tentative rulings?  | NA  |
| 4. If the judge issues tentative rulings in advance of the hearing, may the parties submit without an appearance?  | NA  |
| 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? | NA  |

### 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)?  | I have, on a proper showing.  |
| 2. If so, who is the point of contact for arranging for consideration of emergency motions?   | Contact either of my law clerks, Sam Diamant and Michael Maloney  |
| 3. Does the judge calendar a hearing on an emergency motion prior to receipt and review of moving papers?   | Sometimes, depending on the circumstances, but it almost always preferable to have at least some pleading that describes the background circumstances, the exigencies, and the relief sought.   |
| 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, I can review materials online.  |
| 5. Does the judge act on emergency motions without requiring notice to any party whatsoever?  | Very, very rarely, i.e., only in those cases where the relief would not adversely affect any party (i.e., a truly administrative matter, and such things can qualify as emergencies), or where I am convinced that the act of giving notice would materially increase the likelihood that a responding party would do something improper. |
| 6. Does the judge require declarants to be present in court on emergency motions?   | Yes, generally.   |

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| <p>7. Does the judge require some notice to another party before granting an application for order shortening time for hearing?</p>  | <p>Generally, yes. Follow the Local Rules.</p>   |
| <p>8. Does the judge grant orders shortening time for hearings (other than emergency matters) upon a showing of good cause?</p>  | <p>Yes.</p>  |
| <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>I hesitate to state that I “routinely” grant OSTs, in the sense that I always try to be sensitive to the needs of the movant and the due process rights of the respondent, in any particular case. That having been said . . .</p> <p>(a) I have granted OSTs on a showing that there is an unlawful detainer proceeding in state court, and the debtor has no readily cognizable interest in the subject property.</p> <p>(b) Yes, regularly, for those matters that qualify as “emergencies”.</p> <p>(c) Yes, but notice is critical.</p> <p>(d) Yes, but notice is critical.</p> <p>(e) NA</p> |

#### IV. HEARINGS & TELEPHONIC APPEARANCES

| Questions   | Response  |
|---|---|
| <p>1. Are telephonic appearances are generally allowed by the judge?</p>  | <p>Yes, generally, in order to promote the speedy, efficient and inexpensive administration of matters. Having said that, I am frequently surprised at counsel’s use of telephonic appearances on case-dispositive matters, e.g., Motions to Dismiss under FRBP 7012(b)(6), Motions for SJ under FRBP 7056, Motions to Dismiss or Convert Chapter 11 cases, etc. It is frequently difficult for me to believe that counsel can have reasonably concluded that a phone appearance will facilitate the most effective presentation of their position on such matters.</p> |
| <p>2. What matters, if any, will the judge <b>not</b> allow telephonic appearances?</p> <p>(a) Disclosure Statement &amp; Confirmation Hearings</p> <p>(b) Evidentiary Hearings</p> <p>(c) Other matters (please specify)</p> | <p>(a) By the moving party or proponent, no telephone appearances; by objecting parties, maybe OK (if arguing issues of law not evidentiary matters).</p> <p>(b) Never.</p> <p>(c) See comments under “1” above for my thoughts.</p>  |
| <p>3. Does the judge consider priority requests from counsel at the time of calendar call?</p>  | <p>Sure. Counsel can also contact Ms. Passadore prior to the hearing, and she will let me know.</p>   |
| <p>4. Does the judge hear stipulations and uncontested matters and requests for continuances before hearing opposed matters?</p>  | <p>On relief from stay, always, because so many matters get resolved consensually, or continued to facilitate a consensual resolution. On law and motion matters, I would be happy to have parties let me know at the beginning of a calendar (or even before) if they have resolved a matter. I would prefer to hear requests for continuance when the matter is called.</p>   |
| <p>5. Does the judge sign orders on the bench at the conclusion of a hearing?</p>   | <p>When necessary.</p>  |

## V. PROCESSING ORDERS

| Questions   | Response   |
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| 1. Does the court require an order to be approved as to form prior to being submitted?  | If contested, yes.   |
| 2. If not, does the court lodge an order for 7 days under LBR 9021-1 (c)?   | Not always 7 days, depending on the circumstances.   |
| 3. What procedure does the judge prefer if there is an objection to the form of order that cannot be resolved by the parties?<br>(a) File a formal objection<br>(b) letter to the judge setting forth the objection<br>(c) Contact the judge’s clerk to set up a conference call<br>(d) Either procedure (please specify) | (a) Not necessary, but I will review any such objection.<br>(b) Preferred.<br>(c) Preferred, in connection with “(b)”.<br>(d) See above. |
| 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 parties should follow BLR 9021-1(c) and 9022-1   |
| 5. What are the judge’s procedures when parties cannot agree on the form of the order?  | Counsel should file a written statement concerning their disagreement and schedule a conference call via Ms. Passadore.                  |
| 6. How long should counsel or parties wait before contacting the staff regarding the status of a lodged order?  | At least three days, barring some true exigencies.   |

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| 7. Does the judge permit attorneys and parties to communicate with the law clerk regarding rejected proposed orders? | Yes, but not for the purposes of obtaining legal advice or conducting oral argument. |
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**VI. JUDGE’S COPIES OF FILED DOCUMENTS**

| Questions   | Response  |
|---|---|
| 1. Does the court require courtesy copies of pleadings filed in the case? | Generally, no.  |
| 2. Are there exceptions to this rule, e.g. relief from stay motions?      | Yes, e.g., MSJ with voluminous decs or accompanying docs (generally, anything over 35 pages). |

**VII. COMMUNICATIONS WITH JUDGE’S STAFF**

| Questions  | Response  |
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| 1. Does the judge allow attorneys and pro per parties to communicate with the judge’s courtroom deputy regarding: (check where appropriate)<br><br>(a) Scheduling matters<br><br>(b) Status of orders<br><br>(c) Other matters (please describe) | (a) x<br><br>(b) x (but inquiries about orders are probably better addressed to my law clerks)<br><br>(c) |

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| <p>2. Does the judge permit attorneys and proper 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) x</p> <p>(b) x</p> <p>(c)</p> |
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### VIII. STATUS CONFERENCES

| Questions   | Response  |
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| <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?            | Generally, yes.   |
| 5. Will the judge set plan filing deadlines at the status conference?                                       | Sometimes.  |
| 6. Can the status conference be continued? If so, can what is the preferred method for doing so?            | Not without the Judge's OK, and I need to have a written request, with the reason why a continuance is appropriate. |

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| 7.                            | Does the judge impose sanctions for failure to file the status conference report?  | Generally not monetary sanctions, but it informs my thinking about motions to convert or dismiss, or to appoint a trustee.   |
| 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, usually prepared by the Court or by the UST.  |
| <b>Adversary Proceedings:</b> |  |  |
| 9.                            | Are status conference statements required? If so, when are they due?   | Generally, yes. And they are generally due five days before the hearing (Friday before the Wednesday hearing date)           |
| 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?   | If I have ordered an SCS be filed, and none is filed, I may issue an order re sanctions.                                     |
| 12.                           | Is the represented party required to appear at the status conference?  | Generally, no.   |
| 13.                           | Will the judge set a trial date at the status conference?  | Frequently, but not always at the initial SC.  |
| 14.                           | Does the judge require the parties to file a discovery plan?   | Not required, but usually helpful.   |
| 15.                           | Can the status conference be continued? If so, what is the preferred method for doing so, and what, if any, deadlines apply?                             | Yes, but only with Court approval based upon a written request that sets forth the reasons why a continuance is appropriate. |

**IX. RELIEF FROM STAY MOTIONS**

| <b>Questions</b>  | <b>Response</b>  |
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| 1. Are appearances required if there is a statement of non-opposition from the debtor and trustee?          | By the responding party, no. By the moving party, not necessarily, but it usually speeds things up to have me hear from the moving party at the hearing, and formally grant the motion there and then. |
| 2. Are telephonic appearances allowed at relief from stay matters?  | Preliminary hearings, 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?                               | Generally no, if by that one means no notice to anyone.  |
| 5. Does the judge have special procedures for handling residential relief from stay motions? What are they? | No.  |

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| <p>6. Does the judge permit shortened notice on motions for relief from stay where there is proof of any of the following:</p> <p>(a) A prior unlawful detainer judgment</p> <p>(b) A prior adequate protection order</p> <p>(c) Multiple bankruptcy filings</p> <p>(d) Other conduct constituting bad faith</p> <p>(e) A Chapter 13 confirmation hearing is already scheduled</p> <p>(f) None of the above</p> <p>(g) Other (please specify)</p> | <p>(a) Sometimes.</p> <p>(b) Sometimes.</p> <p>(c) Sometimes.</p> <p>(d) Sometimes.</p> <p>(e) Sometimes.</p> <p>(f) NA</p> <p>(g)</p>       |
| <p>7. Does the judge hear relief from stay motions on shortened notice in <b>non-residential</b> unlawful detainer cases?</p>   | <p>Sometimes.</p>  |
| <p>8. Does the judge require declarants to be present in court for final (evidentiary) hearing on motions from relief from the automatic stay?</p>  | <p>Generally yes, if there is a dispute about the subject of their testimony, the declarants needs to be available to be cross-examined.</p> |
| <p>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?</p>   | <p>Where appropriate.</p>  |

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| 10. Does the judge grant requests for retroactive annulment of the automatic stay? | Where appropriate. |
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**X. MOTION PRACTICE**

| Questions  | Response   |
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| 1. When does the judge require declarants to be present in court on emergency motions or hearings on shortened time?           | Generally yes, if there is a dispute about the subject of their testimony, the declarants needs to be available to be cross-examined.  |
| 2. When does the judge require declarants to be present in court on regularly scheduled motions?                               | Rarely. Most law and motion matters are considered on a closed record; if we need a trial to resolve disputed issues of fact, we can set one at the initial hearing on the matter. |
| 3. Does the judge require written evidentiary objections to be made in a separate document?                                    | Yes, that's helpful.   |
| 4. Can a party continue a motion on its own?   | Not without notice to the other side, or the Court's OK after review of a written request setting forth the reasons for a continuance.   |
| 5. Can a hearing on a motion be continued by stipulation?  | See "4" above.   |
| 6. Does the judge allow true ex parte relief (without notice to the opposing party) when issuing temporary restraining orders? | Very rarely.   |
| 7. If not, what notice does the judge require?   | This really depends on the circumstances presented, though 24 hours notice is usually the bare minimum.  |

## **XI. PROOF OF SERVICE REQUIREMENTS**

| <b>Questions</b>  | <b>Response</b>  |
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| 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? | I am more likely to allow this kind of error to be fixed by a supplemental dec or COS. |
| 2. Does the judge continue motions to allow movant to provide proof of service?   | See “1” above.   |
| 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)        | Rarely.  |

## **XII. CONTINUANCES**

| <b>Questions</b>   | <b>Response</b>   |
|--|---|
| 1. Does the judge allow for continuances of motions other than by noticed motion or written stipulation? | Generally no.   |
| 2. Does the judge permit stipulated or unopposed oral requests for continuances?                         | Sometimes, but I need to know “why” and it needs to be persuasive.  |
| 3. Does the judge permit continuances of trial dates by stipulation of the parties?                      | Rarely, trial dates are pretty precious around here, and I take trial setting very seriously, and expect the parties to do the same. And, again, I need to know why a continuance is necessary and appropriate. |

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| 4. Does the judge permit continuances of disclosure statement hearings or confirmation hearings by stipulation of the parties? | Sometimes, provided, however, that (a) the plan proponent(s) should comply with the BLR concerning prior notice to the Court re the parties' intentions at the upcoming hearing on a DS or Plan confirmation, and (b) counsel for the proponent(s) must be at the hearing (or appear telephonically) to address any questions that a creditor or party in interest may have concerning scheduling, or matters related to the DS or Plan. |
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### **XIII. DISCOVERY DISPUTES**

| <b>Questions</b>  | <b>Response</b>  |
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| 1. Does the judge require a noticed motion in order to hear a discovery dispute?  | Not necessarily.   |
| 2. Does the judge resolve discovery disputes by conference calls?   | Whenever possible.   |
| 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?   | Generally no.  |
| 6. What is the deadline for holding a hearing on a discovery dispute motion?  | Civil Local Rule 37-3 addresses this question and the Court will adhere to the requirement that any motion re a discovery dispute (or request for a telephonic conference) be made within 7 days of the discovery cut-off. I can then hold a hearing on pretty short notice. |

#### XIV. CONVERSION AND RULE 2004 MOTIONS

| <b>Questions</b>   | <b>Response</b>   |
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| 1. What is the minimum amount of notice the judge requires for a FRBP 2004 Examination?  | For an examination alone, not less than a week. Since 2004 exam requests are typically accompanied by requests to produce documents, the important question for the Court is frequently how long is a reasonable time to have the responding party make that production. So, act accordingly. |
| 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? | Sometimes.  |
| 3. Does the judge rule on motions under FRBP 2004 without a hearing?   | If they are disputed, generally not without some type of hearing.   |
| 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 and set up a conference call.   |
| 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**

| <b>Questions</b>  | <b>Response</b>   |
|---|---|
| 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? | Generally, no.  |
| 2. Does the judge require an adversary proceeding to avoid a junior lien?   | To value a junior lien, no, motion practice suffices. To avoid a lien under sections 544-49 and 550, an AP is required. |
| 3. Does the judge require the debtor's presence at confirmation hearings?   | Yes, unless excused pursuant to a pre-hearing request.  |
| 4. Does the judge require pre-hearing statements prior to confirmation hearings? If so, does the judge prefer a joint statement?  | Yes, and yes.   |
| 5. Does the judge require debtor's counsel to be physically present in court for relief from stay hearings?   | At a preliminary hearing, no.   |
| 6. Does the judge allow step plans in which monthly payments are increased during plan performance?   | Yes.  |
| 7. Will the judge confirm a plan prior to a loan modification being finalized, provided creditor is receiving adequate protection payments?   | Yes.  |

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| <p>8. At relief from stay hearings does the judge:</p> <p>(a) Require waiver of the Rule 4001 stay?</p> <p>(b) Allow a three strikes provision that allow automatic relief from stay if a debtor is late on three payments?</p> | <p>(a) Sometimes.</p> <p>(b) Frequently.</p> |
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**XVI. CHAPTER 11 PROCEDURES**

| <b>Questions</b>  | <b>Response</b>  |
|---|--|
| <p>1. Does the judge prefer that a party use the combined model plan and disclosure statement for individual Chapter 11 cases?</p>                                    | <p>Yes.</p>  |
| <p>2. Does the judge prefer that a party use the combined model plan and disclosure statement for corporate Chapter 11 cases?</p>                                     | <p>Depends on the debtor's circumstances.</p>                                    |
| <p>3. Does the judge allow less than 35 days' notice of the hearing on a disclosure statement?</p>  | <p>On an initial hearing, only on a showing of good cause.</p>                   |
| <p>4. Does the judge use a fast track procedure involving preliminary review and conditional approval of disclosure statements without a hearing?</p>                 | <p>No.</p>   |
| <p>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?</p> | <p>Probably yes, particularly where the model plan is being used (obviously)</p> |

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| 6. | Does the judge require the plan proponent to submit admissible evidence for the plan confirmation hearing to prove the plan is confirmable?                      | Yes, but a declaration by the debtor is frequently sufficient for me.  |
| 7. | If so, can the plan proponent do this by offer of proof or by pre-hearing submission of a declaration?   | See “6”, and have the declarant be available in person should anyone wish to cross-examine her or him, or should the Court have any questions. |
| 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? | It is helpful if it is in the plan as well as in the order confirming the plan (where it absolutely has to be, in my view).                    |

#### **XVII. DEFAULT JUDGMENT**

| <b>Questions</b> |   | <b>Response</b>   |
|------------------|---|-------------------|
| 1.               | Does the judge require admissible evidence in support of a motion for default judgment? | For damages, yes. |
| 2.               | Does the judge require a hearing on a motion for default judgment?                      | Yes.              |
| 3.               | If so, does the judge require 28 days’ notice of such a hearing?                        | Generally, yes.   |

#### **XVIII. TRIAL PROCEDURES**

| <b>Questions</b> |  | <b>Response</b>  |
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| 1.               | Does the judge have mandatory trial procedures in addition to requirements under the Local Bankruptcy Rules? | Yes, see generally my form of Scheduling Order for trials. |
| 2.               | If so, how are these procedures obtained?  | Please contact Ms. Passadore to obtain a copy.             |

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| 3.  | When are trial dates set by the judge?   | As early in the matter as practicable, usually no later than the second SC.   |
| 4.  | Does the judge hold pre-trial conferences and if so when are those held relative to the trial date?  | Depends on the matter and the complexity of the issues involved. Pre-trials are usually held 2-4 weeks prior to the trial date. |
| 5.  | Does the judge require direct testimony from witnesses in party's control to be presented by declaration?  | Yes, except where there is a material issue re credibility (as in an action under section 523(a) or 727)                        |
| 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? | See "5" above, and this should be discussed at a Status Conference prior to trial.  |
| 7.  | Does the judge have published procedures regarding the exchange of declarations in advance of trial?   | Yes, in the 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?                               | Yes.  |
| 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?   | See Scheduling Order.   |
| 12. | Does the judge have any deadline for bringing motions in limine? If so, when are they set.   | Three court days before trial.  |

## **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?                      | Parties are not generally "ordered" to BDRP, but they may be strongly "encouraged". |
| 2. Does the judge use settlement conferences to encourage disposition of adversary proceedings and contested matters? | Yes.  |
| 3. Does the judge use settlement conferences to encourage disposition of Chapter 11 plan confirmation disputes?       | Yes.  |
| 4. Would the judge act upon request as a settlement judge on the case assigned to him or her as the trial judge?      | Yes, depending on the circumstances and the nature of the disputed matters.         |