

Judicial Procedures Survey for the Honorable Dennis Montali

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

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)?	<p>Yes – Ch 11 First Day matters (no OST required)</p> <p>TROs are generally heard on at least 72 hours notice (no OST required) – However all papers must be served on defendant <i>prior</i> to hearing.</p> <p>All other matters require an OST and compliance with B,L,R, 9006-1(c).</p>
2. If so, who is the point of contact for arranging for consideration of emergency motions?	Calendar clerk: Ms. Lorena Parada, 415-268-2323 or lorena_parada@canb.uscourts.gov
3. Does the judge calendar a hearing on an emergency motion prior to receipt and review of moving papers?	Yes, subject to the filing and serving those papers; however, parties should strive to file underlying papers prior to seeking an OST.
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 in extreme cases and 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

<p>7. Does the judge require some notice to another party before granting an application for order shortening time for hearing?</p>	<p>Yes, as required by B.L.R. 9006-1(c)</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, provided the requesting party complies with B.L.R. 9006-1.</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>(a) Yes</p> <p>(b) OSTs not necessary</p> <p>(c) Yes</p> <p>(d) OSTs not necessary</p> <p>(e) Most other matters for good cause shown or stipulation of the parties.</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) Telephone appearance by debtor’s counsel is permitted only for hearings on tentative approval of the court’s Standard-Form Combined Plan and Disclosure Statement</p> <p>(b) No</p> <p>(c) When client is present in court</p>
<p>2. Does the judge consider priority requests from counsel at the time of calendar call?</p>	<p>Yes</p>
<p>3. Does the judge hear stipulations and uncontested matters and requests for continuances before hearing opposed matters?</p>	<p>If parties have notified the courtroom deputy in advance.</p>

IV. PROCESSING ORDERS

Questions	Response
<p>1. Does the court require an order to be approved as to form prior to being submitted?</p>	<p>Either approved as to form or served in accordance with B.L.R. 9021-1(c).</p>
<p>2. If not, does the court lodge an order for 7 days under LBR 9021-1 (c)?</p>	<p>The rule says that orders not approved as to form will “ordinarily” be lodged for seven days. This judge “ordinarily” signs orders sooner, so any objections as to the form of order should be communicated as soon as possible to the judge’s law clerk by e-mail, Peggy_Brister@canb.uscourts.gov).</p>

<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) Not necessary. If objection is filed, objector should notify law clerk (Peggy_Brister@canb.uscourts.gov) by e-mail.</p> <p>(b) OK, with copy of letter sent by e-mail to Peggy_Brister@canb.uscourts.gov and to Montali_Orders@canb.uscourts.gov, with cc: to opposing party.</p> <p>(c) OK. Objector should send e-mail to Peggy_Brister@canb.uscourts.gov and to Montali_Orders@canb.uscourts.gov, with cc to opposing party, explaining the objection. Court will normally resolve the dispute or schedule a conference call.</p> <p>(d) Option (c) is preferred.</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>Seven days</p>
<p>7. Does the judge permit attorneys and parties to communicate with the law clerk regarding rejected proposed orders?</p>	<p>Yes, by reply e-mail to Montali_Orders@canb.uscourts.gov.</p>

V. JUDGE’S COPIES OF FILED DOCUMENTS

Questions	Response
1. Does the court require courtesy copies of pleadings filed in the case?	Yes, where the filings relate to scheduled hearings (other than motions for relief from stay).
2. Are there exceptions to this rule, e.g. relief from stay motions?	See above

VI. COMMUNICATIONS WITH JUDGE’S STAFF

Questions	Response
<p>1. Does the judge allow attorneys and pro per parties to communicate with the judge’s courtroom deputy 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) Only when order has been submitted more than 7 days</p> <p>(c) Whenever 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.</p>

<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) No, but contact with the courtroom deputy (Ms. Lorena Parada) is permitted.</p> <p>(b) Only when the order has been submitted more than 7 days. Any such inquiry should be sent to Montali_Orders@canb.uscourts.gov</p> <p>(c) Only to report stipulated continuance, settlement or resolution of a pending matter, to provide the three-day notice that a plan or DS hearing is going forward, or to object to a form of a submitted order (by email at Montali_Orders@canb.uscourts.gov and Peggy_Brister@canb.uscourts.gov).</p>
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VII. STATUS CONFERENCES

Questions	Response
Chapter 11 Cases:	
1. Are status conferences held in Chapter 11 cases?	Usually, unless there have been early hearings on cash collateral, first-day orders, etc.
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?	Normally handled by docket entry.
Adversary Proceedings:		
9.	Are scheduling conference statements required? If so, when are they due?	No
10.	Are the required contents of the statement set forth in the judge's order setting the scheduling conference?	N/A
11.	Does the judge impose sanctions for failure to file the scheduling conference statement?	N/A
12.	Is the represented party required to appear at the scheduling conference?	No
13.	Will the judge set a trial date at the scheduling conference?	Only occasionally at the first scheduling 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.
15.	Can the scheduling 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, plaintiff should notify the courtroom deputy by e-mail at least two days prior to the scheduled date and promptly file a stipulation showing the agreed continued date and time. This procedure may be utilized only twice in any particular adversary proceeding.

VIII. RELIEF FROM STAY MOTIONS

Questions	Response
1. Are appearances required if there is a statement of non-opposition from the debtor and trustee?	Moving party should e-mail the courtroom deputy and ask that the matter be dropped then serve and upload an order.
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 non-residential 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, but only to an affected creditor. <u>See</u> Ellis v. Yu, 523 BR 673 (9 th Cir. BAP 2014)
9.	Does the judge grant requests for retroactive annulment of the automatic stay?	Yes

IX. MOTION PRACTICE

Questions		Response
1.	When does the judge require declarants to be present in court on emergency motions or hearings on shortened time?	Not required
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 48 hours 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 the moving party should notify the courtroom deputy by e-mail at least 48 hours prior to the scheduled date and promptly file a stipulation showing the agreed 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 48 hours notice is required for an application for a TRO.

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)	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?	Yes
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, continuances in advance are not normally permitted.

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, and email from the opposition.
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

Questions		Response
1.	Do you typically set the discovery cut-off date of first Scheduling Conference?	No, unless the trial is set at that conference.
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, but the parties may extend that date by agreement.

XIV. CONVERSION AND RULE 2004 MOTIONS

Questions		Response
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?	Treated as a discovery dispute. Parties to meet and confer, then set up telephone conference through courtroom deputy.
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.
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) Normally if requested and not specifically opposed (b) Normally if requested

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, but some obvious changes must be made, e.g., timing of discharge; absence of exemptions.
3. Does the judge allow less than 35 days' notice of the hearing on a disclosure statement?	<p>Yes – fourteen days' notice is sufficient for hearings on tentative approval of a combined DS/Plan utilizing the court's Standard-Form Combined Plan and Disclosure Statement. Counsel should file a Notice of Hearing, but should NOT serve it by mail on the full mailing list.</p> <p>Otherwise, a party seeking final approval of a disclosure statement or not utilizing a combined DS/plan must obtain an order shortening time for less than 35 days' notice.</p>
4. Does the judge use a fast track procedure involving preliminary review and conditional approval of disclosure statements without a hearing?	Yes – see answer 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?	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. When does the judge require a hearing on a motion for default judgment?	For non-dischargeable cases, except where there is a presumption of abuse.
2. If so, does the judge require 28 days' notice of such a hearing?	15 days notice is adequate. 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 and posted under Judge's section of court website.
3. When are trial dates set by the judge?	At the Scheduling Conference, although parties may confer with courtroom deputy for trial dates, especially for lien strips hearings.
4. Does the judge hold pre-trial conferences and if so when are those held relative to the trial date?	Not normally, unless the case is complex, will take more than a day or two, and will involve many witnesses, especially experts and non-parties.

5.	Does the judge require direct testimony from witnesses in party's control to be presented by declaration?	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 both sides agree.
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?	No, but the 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?	No
11.	How are the judge's special procedures for presentation of exhibits in the judge's courtroom obtained?	In Trial Scheduling Order. The courtroom deputy should be consulted in advance of trial about presenting documenting evidence electronically.
12.	Does the judge have any deadline for bringing motions in limine? If so, when are they set.	Yes, in Trial Scheduling Order.