

Procedures...

JUDGE JEFFERY A. DELLER
EFFECTIVE NOVEMBER 7, 2005 (Updated: January 31, 2008)

The following procedures are specific to Judge Deller's cases and are mandatory unless otherwise ordered. These procedures and the hearing dates posted are subject to change at any time by the Court. Parties and their legal counsel are responsible for reviewing the procedures and, where applicable, using only the posted hearing dates.

These procedures supplement and do not replace the Federal Rules of Bankruptcy Procedure, Local Rules, Court Procedures Manual, and General Orders of this Court.

I. PROCEDURES APPLICABLE TO ALL CASES

- A. **Correspondence with the Court:** Judge Deller discourages letters or other ex parte communications concerning cases (See Fed.R.Bankr.9003). To the extent parties feel it is necessary to correspond with the Court regarding administrative matters, they should do so in writing and copy opposing counsel. Information regarding the merits of a matter is properly brought before the Court in the form of a pleading. Unless expressly authorized by Judge Deller, no documents or papers are to be faxed or e-mailed to chambers. Judge Deller's courtroom deputy will assist with the administration of procedural matters, but is prohibited from giving legal advice.
- B. **Continuation, Rescheduling, and Canceling Hearings:** Requests to continue, reschedule or cancel a hearing must be made by written motion. Written requests to continue, re-schedule or cancel a duly noticed hearing are considered by Judge Deller on a case-by-case basis. All requests for a continuance, rescheduling or cancellation of a duly noticed hearing should identify the good cause supporting the requested action, and identify whether the parties in interest consent and/or object to the proposed relief. No hearings will be continued, rescheduled, or cancelled, even if the matter has been settled, unless an appropriate motion and proposed order have been electronically filed with the Clerk at least 3 (three) days before the scheduled hearing date. If time does not allow filing 3 days before the scheduled hearing to provide a status report to the Court, calling Chambers or the courtroom deputy will not continue, reschedule, or cancel the hearing.
- C. **Filing of Pleadings, Motions and Other Court documents:** Documents are to be filed electronically with the Clerk's Office. Unless requested otherwise by Judge Deller, and except as set forth herein, no courtesy copies of filings are required. In regards to emergency matters or matters in which an expedited hearing is requested, please notify the courtroom deputy of the filing. Judge Deller will evaluate such request for an expedited hearing on a case-by-case basis and will schedule a hearing at a date and time as may be appropriate. Courtesy copies of emergency motions or requests for expedited hearings should be provided and delivered to the courtroom deputy.

- D. **Witnesses**: No witnesses will be heard on motions days unless the Court specifically orders otherwise in a particular case. As set forth below, all evidentiary hearings will be specially scheduled.
- E. **Telephone Participation**: Parties or counsel who are located more than 100 miles from the courthouse or have cause to appear telephonically may be able to participate in a non-evidentiary hearing telephonically provided that arrangements are made by calling the courtroom deputy at least three (3) days prior to the scheduled hearing. Parties or counsel who desire to participate by phone must secure the consent of other parties-in-interest who may also participate at the hearing, and if requested by such parties, use a telephone line and/or dial-in number that permits other parties to participate in the telephonic aspect of the hearing as well.
- F. **Mediation and Alternative Dispute Resolution**: Judge Deller encourages litigants to utilize mediation as a means to resolve disputes. If litigants have a matter that is ripe for mediation, advise Judge Deller in writing of the litigants' desire to mediate the particular controversy.
- G. **Appearance of Counsel at Hearings**: Counsel must appear at scheduled hearings unless the order scheduling hearing specifically provides otherwise. Do not contact chambers concerning whether a scheduled hearing has been cancelled (or defaulted). To determine whether a matter remains on the hearing calendar, check the calendar at <http://www.pawb.uscourts.gov> after 12:00 noon the day before the hearing. Orders entered by default will be identified on the calendar. To verify whether a default order has been entered, check the docket. If a Certificate of No Objection is timely filed, the matter may, at the Court's discretion, be taken off the calendar. If a Certificate of No Objection is not timely filed, or if a default order is not entered, counsel must appear at the hearing.
- H. **Motions for Temporary Restraining Order**: A plaintiff seeking a temporary restraining order must electronically file a motion for temporary restraining order and a motion for preliminary injunction at the same adversary number as the original complaint for injunctive relief. See Fed.R.Bankr.P. 7065 and Fed.R.Civ.P. 65. As soon as the request for a temporary restraining order is filed, the plaintiff's counsel must call the courtroom deputy, to arrange for a hearing.
- I. **Motions Seeking to Extend or Re-Impose the Automatic Stay in Consumer Cases**: Judge Deller requests that parties filing motions to extend or impose the automatic stay provide the following information in their motion:
1. If the moving party desires to extend the automatic stay as to all creditors, clearly state so in the motion, notice, and caption. If the moving party is moving to extend the stay only to certain creditors, state the names of the creditors in the motion, notice, and caption.

2. State the date on which the automatic stay expires. If the stay does not apply to the case before the Court, state that the stay does not apply to the action.
3. State the case number(s) for all bankruptcy actions involving the debtor and pending in any bankruptcy court within the previous year.
4. Describe the reason that debtor's previous bankruptcy was dismissed.
5. State whether debtor is presumed to not have filed the case at issue in good faith and the reason for the presumption.
6. State with particularity the substantial change of circumstances which occurred since the dismissal of the previous case.
7. Have the motion to extend accompanied by a signed verification of the facts set forth in the motion.

II. PROCEDURES APPLICABLE TO CHAPTER 7 AND 11 CASES

- A. **Scheduling of Motions and Other Matters:** "Self-Scheduling" does not apply to any Chapter 11 or Chapter 7 cases before Judge Deller. If a pleading, motion or other document requesting relief is filed, Judge Deller will issue a scheduling order for the particular matter.
- B. **First-Day Matters in Chapter 11 Cases:** As soon as the first-day motions have been filed in a particular Chapter 11 case, contact the courtroom deputy to arrange for a hearing. Counsel for the Chapter 11 debtor is encouraged to provide the Clerk's Office with the "first-day" binder of all filed first-day motions and any responses or objections thereto, along with a proposed agenda for the first-day hearing and an affidavit or declaration of a representative of the debtor in support of the first-day motions.

III. PROCEDURES APPLICABLE TO CHAPTER 12 AND 13 CASES

- A. **Scheduling of Adversary Proceedings and Evidentiary hearings; Other Non-Self-Scheduled Matters:** "Self-scheduling" does not apply to the scheduling of evidentiary hearings of any sort; nor does self-scheduling apply to matters filed in adversary proceedings. Adversary proceeding matters and evidentiary hearings, including evidentiary hearings for contested matters in the main bankruptcy case, will be scheduled by the Court. In addition, the following additional matters shall not be self scheduled by the moving party and will be scheduled only by the Court:

General Case Matters:

- Chapter 12 plans;
- Amended Chapter 13 plans;

Amendments to schedules; and
Applications to modify plans

Contested Matters, Applications, and/or Motions for:

Contempt;
Dismissal or conversion filed by the debtor
Extension of time;
Expedited hearing;
Hardship discharge;
Payment of unclaimed funds;
Reconsideration of, or to vacate or modify, a prior order of the Court;
Reopening of a case or adversary proceeding;
Sanctions; and
Wage attachments

B. Self-Scheduling of Certain Chapter 12 and Chapter 13 Matters:

1. **Choosing a Hearing Date:** With respect to all other Chapter 12 and Chapter 13 matters not identified in section III(A) above, such matters should be "self-scheduled" for a hearing and response date by the moving party. Specifically, when scheduling a matter, the movant shall choose a hearing date from the list published by the Clerk relating to Judge Deller's self-scheduling calendar dates, and the moving party shall complete, file and serve a Notice of Hearing. (Note, the Notice of Hearing must conform to the Notice of Hearing forms utilized by the Court) ONLY the hearing dates listed and published by the Clerk for Judge Deller shall be used for self-scheduled matters. Any matters scheduled by the movant for a date other than one listed by the Clerk shall be dismissed without prejudice to being re-filed, re-noticed, and rescheduled by movant for an authorized date. If a matter is dismissed for noncompliance, the filing party must serve all parties in interest with notice of the dismissal order and cancellation of the hearing.
2. **Notice of Hearing:** Except with respect to matters that require a longer notice period (such as objections to claims) the hearing date selected by the movant must provide for at least 25 calendar days notice of the hearing. At least 25 calendar dates before the chosen authorized hearing date, the movant shall simultaneously electronically file the motion and Notice of hearing and serve same on the Chapter 12 or 13 Trustee and all other respondents and parties in interest. The motion must be filed in sufficient time to allow the 17 days response time required by local rule AND so that the deadline for filing responses/answers/objections is no later than 7 calendar days before the scheduled hearing date. Objections to claims must be filed at least 30 days before the chosen hearing date. Any matters scheduled by the movant which provides for less than the required period of notice shall be dismissed without prejudice to being re-filed, re-noticed, and rescheduled by movant for an

authorized date. If a matter is dismissed for noncompliance, the filing party must serve all parties in interest with notice of the dismissal order and cancellation of the hearing.

- C. **Ability to Opt-Out of Self-Scheduling Procedure:** The self-scheduling process has been implemented for convenience of the litigants. If a moving party prefers to not utilize the self-scheduling procedures, such moving party may opt-out of the process on a motion-by-motion basis. In such event, the moving party simply electronically files their motion or application along with a proposed order. Upon receipt, Judge Deller's chambers will issue a scheduling order which will set the dates and times for parties to file objections and/or responses, and will set forth the dates and times for the hearing. The scheduling order will also direct that the moving party immediately serve the scheduling order (along with the motion and proposed order) upon all parties against whom relief is sought, and direct that the moving party file a certificate of service evidencing service of the same.

D. **Amendments to Plans Previously Confirmed on a Final Basis:**

1. It is not necessary to file a motion to modify when an amendment to a finally confirmed Chapter 12 or 13 plan is sought. Instead, the proponent must file:
 - a. A "Notice of Proposed Modification to Confirmed Plan Dated _____", which substantially complies with the form found on Judge Deller's website; and
 - b. A proposed Amended Chapter 12 or 13 Plan, as the case may be.
2. If these two items are filed, the proposed amendment will follow the Court's standard conciliation/confirmation process. Of course, when counsel serves the Amended Plan on all creditors, they should also serve the Notice of Proposed Modification as well.
3. If counsel fails to file the Notice of Proposed Modification when the Amended Plan is filed, a corrective entry will be made on the docket advising counsel that the Notice of Proposed Modification should be filed (and served along with the Amended Plan). If the debtor, through counsel, does not take corrective action within the time period proscribed by the corrective entry, the proposed amendment will be denied without prejudice due to failure to adhere with these procedures.

E. **Cases Ready for Trustee's Final Account/Report**

1. In cases involving a 60 month plan and following completion of the 60th month from Plan Confirmation, the Court routinely schedules Status Conferences to determine the need for entering a schedule for implementation of close out procedures.

2. In cases involving a plan having duration of less than 60 months (e.g., 36 months, 48 months, etc.), the Court requires Debtor's Counsel to file a Motion requesting a Status Conference to determine whether Court intervention is needed to close out the case in instances where the case has not been closed within 4 months of the end of the plan term. In any such Motion for Status Conference, counsel should advise the Court as to whether (1) the plan base is met; (2) the date on which the plan duration has run; and, (3) within 4 months of either event, whether the Chapter 13 Trustee has filed a final account/report or taken some other action toward closing the case (i.e., notifying debtors that they are to assume responsibility with the mortgage payments and cease making payments to the Trustee). Service of the Motion and any scheduling notice related thereto shall be made upon the Chapter 13 Trustee. Nothing contained in these procedures should be deemed or construed to eliminate the Chapter 13 Trustee's responsibility to promptly close-out Chapter 13 cases where the plan term has expired and the plan goals (and base) have been met.