

JUDGE JEFFERY A. DELLER
EFFECTIVE NOVEMBER 7, 2005 (Updated: **October 26, 2018**)

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 Bankruptcy Rules, 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 (Revised 10/26/2018)**: Counsel may be authorized to participate telephonically in **most** non-evidentiary hearings provided that arrangements are made through CourtCall as provided herein. Participation by telephone is always at the discretion of the Court. Out-of-town counsel participating by telephone at any given hearing may be required to have local counsel present in the courtroom.

Parties wishing to appear telephonically through CourtCall must advise the Court by telephone at least three (3) business days prior to the hearing in which the request to appear telephonically is being made. After contacting Judge Deller's Chambers, parties must register with CourtCall at (866) 582- 6878 no later than three (3) business days prior to a scheduled hearing. Registrants must provide CourtCall with the following information: (a) case name and number; (b) name of the judge conducting the hearing; (c) the hearing date and time(s); (d) the participant' s name, address, and telephone number; (e) the name of the party or parties whom the participant represents; (f) the matter(s) on which the participant wishes to be heard or whether the participant intends to monitor the proceedings in "listen-only" mode; and (g) any other information required by CourtCall. Parties shall pay the current fee charged by CourtCall upon registration.

Telephonic participation is not permitted in the following matters at which all parties in interest must appear in person:

- Any matter in which a party is directed to attend in person;
- Show Cause hearings;
- Plan confirmation hearings; and
- Evidentiary matters of any kind.

All parties appearing by telephone must abide by the following directives at all times:

- Use of a speaker phone, cellular phone, or phone located in a public place is prohibited;
- All parties must use their "mute" buttons when not speaking;
- Placing the Court on "hold" during the call is prohibited;

- Conversations with any party, other than the Court, are prohibited; and
- Any interference with the call, including background noise which disturbs the proceedings, is prohibited.

Failure to comply with these telephonic procedures may result in the Court revoking the party's telephonic privileges or imposing other sanctions.

All parties appearing telephonically must dial-in to CourtCall ten (10) minutes prior to the scheduled start of the hearing. Parties participating telephonically should be aware that, based on the Court's docket, a hearing may not begin until after the time scheduled. In that event, parties who wish to participate must remain on the line until the case is called. The Court will not call a case a second time. Parties who do not appear when the case is called will be deemed to have waived their appearance and the Court will proceed with the hearing.

Any party who registers to appear telephonically but fails to appear either in person or telephonically shall be deemed to have waived its appearance. The Court will proceed with the hearing in the absence of that party, and the Court may enter an order adjudicating the matter.

- 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. **Certificates of No Objection and Certifications of Counsel:** The Court requires the use of Certificates of No Objection (a "CNO") and Certifications of Counsel (a "COC") as provided in Local Rules 9013-7 and 9013-8, as supplemented by these procedures.

In the absence of a properly filed CNO, a matter may be defaulted or cancelled in the discretion of the Court. Parties should check Judge Deller's calendar on the Court's website after 12:00 Noon on the day prior to the scheduled hearing to determine if the matter remains on the calendar. Orders entered by default or removed from the hearing calendar for other reasons will be identified on the calendar. Unless a matter is removed from the calendar, the party (if *pro se*), or counsel for the party, must appear at the hearing.

II. PROCEDURES APPLICABLE TO CASES

- A. **Scheduling of Motions and Other Matters:** "Self-Scheduling" applies to Chapter 7, 11, 12 and 13 cases, **all chapters** (again, as set forth below, this is proceedings in the main case only and not adversary proceedings).
- 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 7, 11, 12 AND 13 CASES

- A. **Scheduling of Adversary Proceedings and Evidentiary hearings; Other Non-Self-Scheduled Matters:** As a general matter, all motions, applications and other requests for relief filed in Chapter 7, 11, 12 and 13 cases are "Self-Scheduled" pursuant to Local Bankruptcy Rule 9013-5. Parties are directed to the Court's general website for information regarding the dates and times for hearings that may be "Self-Scheduled." Requests for emergency relief, 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 and 13 plans;
Amendments to plans;

Amendments to schedules; and
Applications to modify plans
Wage attachments; and
Extensions of time

Chapter 11 Disclosure Statements

Chapter 11 Plans

First-Day Motions

Expedited Motions

B. Self-Scheduling of Chapter 7, 11, 12 and Chapter 13 Matters:

1. **Choosing a Hearing Date:** 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 days before the chosen authorized hearing date, the movant shall simultaneously electronically file the motion and Notice of hearing and serve same on the **Chapter 7 Trustee, Chapter 12 Trustee, Chapter 13 Trustee or the United States 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.

3. **Failure to Comply**: The Court may strike a pleading or other request for relief if the proponent fails to adhere to the "Self-Scheduling" procedures. Parties are not permitted to opt out of "Self-Scheduling" absent approval of the Court.

C. 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.

D. 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.