

JUDGE THOMAS P. AGRESTI
Revised and effective November 22, 2021

NOTICE: ALL REFERENCES TO TELEPHONIC PROCEDURES HEREIN, ONLY, ARE STAYED BY THE AMENDED NOTICE OF TEMPORARY MODIFICATION OF APPEARANCE PROCEDURES BEFORE JUDGE THOMAS P. AGRESTI, DATED AND EFFECTIVE NOVEMBER 19, 2021, UNLESS OTHERWISE DIRECTED BY THE COURT.

The following procedures are specific to Judge Agresti's cases and are mandatory unless otherwise ordered.

These procedures and the hearing dates posted are subject to change at any time. Parties and Counsel are responsible for reviewing the procedures and using only the posted hearing dates.

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

A. GENERAL PROCEDURES IN ALL JUDGE AGRESTI CASES

(1) Filing Pleadings and Proposed Orders:

(a) All pleadings are to be electronically filed with the Clerk's Office. All pleadings requesting relief must include, as a separate attachment, a proposed order which details the specific relief to be granted. All pleadings and other documents, including orders and certificates of service, regarding a matter that is already filed shall contain the caption, case number and docket number of the matter to which they relate. *(Revised 11/09/15)*

(b) Exhibits, affidavits, or other attachments should normally be filed as part of the pleading or motion to which they pertain. The Court understands that occasionally such material may need to be the subject of a separate, subsequent filing because it was inadvertently omitted from the original filing, or was unavailable when the original filing was made, etc. In such instances, the material is not be filed as a "bare" document but must instead include a "cover sheet" that at least contains the appropriate caption and a title that includes reference to the pleading or motion to which it is related. *(New 03/15/18)*

(c) Accompanying this procedure narrative are a number of recommended forms to be used in Judge Agresti cases. *(New 08/23/19)*

(2) No Courtesy Copies: No courtesy paper copies of electronically filed pleadings shall be delivered directly to Judge Agresti unless specifically ordered. Except in regard to emergency matters (see below), no pleadings or correspondence are to be faxed or e-mailed to Chambers unless authorized by Judge Agresti or his staff. *(Revised 09/20/11)*

(3) ***Expedited Hearings:***

(a) In regard to all expedited matters, immediately upon filing, Counsel is required to telephonically or electronically notify Chambers Staff, i.e., Pam Jewell at 814-464-9760 or Atty. Ken Wargo at 814-464-9761. *(Revised 11/22/21)*

(b) In all cases, the movant shall serve a copy of the completed scheduling Order and the Motion by hand delivery, direct email (separate from CM/ECF) and/or fax, to the extent possible, on the Respondent(s), Trustee, Debtor, Debtor's Counsel, all secured creditors whose interests may be affected by the relief requested, U.S. Trustee and counsel for any committee. Service must also be via U.S. Mail. Movant shall immediately file a certificate of service indicating such service.

(4) ***Motion Court for Chapter 12 and 13 cases:*** Judge Agresti usually conducts Motion Court for all Chapter 13 cases on Wednesdays on approximately 18 separate dates over the course of a year. Dates and times are announced and posted on his website throughout the year. *(Revised 08/23/19)*

(5) ***Motion Court for Chapter 7, 11, and 15 cases:*** Judge Agresti usually conducts Motion Court for all Chapter 7, 11, and 15 cases on Thursdays approximately every three weeks. Dates and times are announced and posted on his website throughout the year. *(Revised 08/23/19)*

(6) ***Continued, Rescheduled, Cancelled Hearings:*** Hearings will not 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's Office ***at least 3 (three) full business days before the scheduled hearing date.*** If time does not allow filing 3 days before the scheduled hearing date, a representative of a Party must appear at the scheduled hearing to provide a status report to the Court. Calling Chambers or the Courtroom Deputies will not continue, reschedule, or cancel the hearing. *(Revised 08/15/14)*

(7) ***Witnesses:***

(a) No witnesses will be heard and no exhibits received on motion days unless the Court specifically orders otherwise in a particular case. All Evidentiary Hearings will be specially scheduled. *(Revised 08/15/14)*

(b) For Evidentiary Hearings and Trials, witnesses and counsel for the parties shall appear in person unless prior arrangements have been made with Chambers, if appropriate cause is shown, by prior court order allowing the witness to appear by video or telephone. The use of depositions, generally, at Evidentiary Hearings and Trials will be governed by the Federal Rules of Bankruptcy Procedure and the Federal Rules of Evidence, *provided however*, that Judge Agresti will not allow the use of a deposition

that was taken because the witness will be unavailable for the Evidentiary Hearing or Trial unless the party taking such deposition obtained prior approval of the Court.

(8) **Hearing Procedures:**

(a) Except for the limited exceptions otherwise noted in these Procedures, Judge Agresti requires Parties and their Counsel to personally appear in any pending matter including Motion Court, *provided however*, for non-evidentiary hearings *only*, Judge Agresti does permit Counsel and Parties to appear via video conference from either his Pittsburgh or Erie Courtroom for both Pittsburgh and Erie matters. *(Revised 08/23/19)*

(b) Parties or Counsel wishing to participate in a hearing by video conference (or by telephone, where permitted) must advise the Court **at least three business days prior to the hearing** in which the request to appear by video conference (or telephone) is being made. Arrangements for video conference (or telephone) participation may be made by contacting Judge Agresti's **Deputy-in-Charge, Pamela Jewell, at 814-464-9760**. *(Revised 08/23/19)*

(c) For purposes of efficient video conference hearings, the Moving Party should stand at the podium. The Respondent(s) may be seated, generally, at counsel table closest and to the right of the podium. Counsel must speak clearly into a microphone however, when doing so please position yourself at least 4 inches away from the microphone to allow for clear audio.

(d) During hearings in the Erie Courtroom involving 4 or more attorneys, or during Trials and Evidentiary Hearings, the Court staff may supply Counsel with a lapel microphone to facilitate clear recording of the hearing. Counsel are advised that a single button on the front of the lapel microphone will turn the microphone on or mute the microphone. The microphone is on when the light on top of the lapel microphone is flashing green, the microphone is muted when the light on top of the lapel microphone is flashing red. Please ensure that your lapel microphone is on when speaking. Remember to return your lapel microphone at the conclusion of the hearing.

(e) All microphones in the Erie and Pittsburgh Courtrooms are sensitive and Counsel should use discretion when speaking to Clients or other Counsel during or between hearings.

(9) **Fee Applications:** All fee applications for professionals must be signed by an attorney licensed to practice law and admitted to this Court and in a form consistent with *W.P.A.LBR 2016-1*. Fee applications will be summarily dismissed if filed by anyone other than an attorney admitted to practice in this Court. *(Revised 08/23/19)*

(10) **Briefs:** Unless Court permission is received, upon proper motion *prior* to filing, no brief by

any Party shall be in excess of 20 pages. *(Revised 09/20/11)*

- (11) **Motions generally:** (**NOTE:** *The following procedure applies to motions, applications, objections to claim, etc., and responses thereto. For the sake of convenience the procedure refers only to “motions” but it should be understood to have this broader application.*) *(New 09/18/20)*

(a) The practice of filing a motion with little more than a sentence or two stating the relief being requested and then directing the Court to an accompanying brief to identify the factual predicate for the motion is strongly disfavored by Judge Agresti. Such motions are subject to summary dismissal without prejudice. *(Revised 09/20/11)*

(b) Motions in adversary proceedings and contested matters are required to “state with particularity the grounds therefor.” *See Fed.R.Bankr.P. 7007, 9013.* It is questionable whether the kind of “short form” motion described above meets this standard. Some attorneys file a short form motion along with a brief and attempt to adopt it by reference into the motion by directing the Court to look to the brief to learn more about the basis for the motion. For several reasons this practice is not approved.

- (i) As a matter of procedure, the Bankruptcy Rules do not contemplate adoption by reference in contested matters. *See Fed.R.Bankr.P 9014.* The practice is questionable at best in adversary proceedings because the brief does not qualify as a “pleading.” *See Fed.R.Bankr.P 7007(a), 7010(c).*
- (ii) On a more substantive and practical level, the practice of filing a short form motion with an accompanying brief makes it difficult for the opposing party to respond to the motion, not to mention the difficulty confronted by the Court in determining what is at issue or the basis for the motion.
- (iii) Although the Court appreciates and encourages the practice of filing an accompanying brief with a motion, it is expected by Judge Agresti that the brief should only contain the legal citations in support of the relief requested in the motion and argument concerning the relevant facts. The motion itself should set forth only the necessary, factual allegations to support the motion and a clear statement of the relief being requested. Also, in preparing the allegations of fact in the motion, the Movant should strike a balance between the particularity requirement of *Rule 9013* and the general, federal philosophy of short, concise “notice pleading” filings.

(c) For the above reasons, consistent with the requirement for adversary proceedings pleadings as provided for in *Fed.R.Bankr.P. 7010(b)*, Judge Agresti expects that motions will be in numbered paragraph form and will themselves contain a sufficient factual predicate so as to enable opposing Parties and the Court to determine the grounds

for the motion without the need to refer to an accompanying brief to identify the required factual predicate for the motion. The same applies to “responses” to motions, which, incidentally, are properly denominated as that – “response to motion” – rather than as an “objection,” “answer,” or other term. Responses should be in numbered paragraph form, corresponding to and responding to the same numbered paragraph in the motion. Additional material that the Respondent wishes to bring to the Court’s attention can be placed in new succeeding numbered paragraphs under a heading of “New Matter” or the like. (Revised 02/23/16)

(d) Consistent with the procedure regarding motions in adversary proceedings as set forth in *W.P.A.LBR 7008-1(c)*, Judge Agresti generally does not allow replies or surreplies in his motion practice. The only exceptions are if the Court sua sponte orders them, or permits them based on a motion seeking leave to file them for good cause shown. Any unauthorized reply or surreply that is filed will be disregarded and may be stricken. (New 03/15/18)

(12) ***Motions for Summary Judgment:*** Summary judgment motions are sometimes filed in short form, i.e., a short paragraph requesting summary judgment incorporating by reference all allegations, references to the record, legal citations and argument contained in an accompanying brief. This approach is inconsistent with *Fed.R.Bankr.P. 7007, 9013* and such motions are subject to summary dismissal without prejudice. Judge Agresti expects that when a motion for summary judgment is filed, the motion itself will contain all allegations of undisputed, material fact along with references to the record and all required exhibits/attachments. Any accompanying brief which is filed should only be for purposes of legal citation and argument with reference to the relevant undisputed facts, similar to the procedure set forth in *W.D.P.A.LCvR 56*. (Revised 08/23/19)

(13) ***Rule 12(b) Motions In Adversary Proceedings:*** Because motions to dismiss pursuant to *Fed.R.Civ.P. 12(b)* are discouraged if the ground is a pleading defect that is curable by amendment, before any such motion is filed the moving party must first request to meet and confer with the respondent to try to reach an understanding regarding an amendment that can avoid the need for a motion. All such motions to dismiss must include a certificate of the moving party that a good faith effort to meet and confer was made prior to the filing, and the failure to include such certificate will be grounds for the summary dismissal of the motion. Respondents likewise have a duty to meet and confer in good faith when requested to do so and may be sanctioned for failing to comply, including the denial of leave to amend the pleading at issue. (Revised 08/23/19)

(14) ***Sale Motions–EASI:***

(a) Judge Agresti is a strong proponent of the Court's "***Electronic Access to Sales Information,***" or "***EASI***" system. He believes that for EASI to be effective sales need to be posted on the system as soon as possible, and that the postings should provide useful information for potential buyers rather than just a bare minimum simply to meet the requirements of the Local Rules. For that reason, he expects EASI postings to be made

contemporaneously with the associated sale motion and to demonstrate a good faith effort to meet the spirit of the EASI system. Failure to do so can result in a dismissal of the sale motion without prejudice.

(b) Sale motions are to **only** name as Respondents those persons and entities that hold a lien, claim or encumbrance (collectively “interest”) against the property to be sold, which interest is to be transferred from the property being liquidated to the proceeds of sale. Each such Respondent and its respective interest must be identified in a separately numbered paragraph in the sale motion. Unsecured creditors should **not** be named as a Respondent. *See, generally, L.R. 9013-3(c)(1), (4), and (7).* A sale motion that fails to meet this requirement is subject to being summarily dismissed without prejudice. *(Revised 11/6/19).*

- (15) **Motions for Temporary Restraining Order:** A plaintiff must electronically file a motion for temporary restraining order and a motion for preliminary injunction at the same adversary number as the corresponding 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 must call Chambers to arrange a hearing, i.e., Pam Jewell at 814-464-9760 or Atty. Ken Wargo at 814-464-9761.** *(Revised 11/22/21)*
- (16) **Narrative Statements in Pleadings:** The Court has noticed an increasing trend to begin complaints and motions with a narrative statement section entitled “Introduction,” or “Background,” or something similar rather than with a numbered paragraph containing factual and legal allegations. **The Court frowns upon this practice as contrary to the “short and plain statement” notice pleading philosophy of the Federal Rules and as bring unfair to the opposing party.** *See, Fed.R.Civ.P. 8(a)(2), 10(b), W.P.A.LBR 5005-13(b)(3), and Three Rivers Hydroponics, LLC v. Florists' Mut. Ins. Co., 2018 WL 791405 *7 (W.D. Pa. Feb. 8, 2018).* Consequently, when reviewing filed pleadings the Court disregards such opening narrative statements and does not expect or require the opposing party to respond to them. *(Revised 08/23/19)*
- (17) **Exhibits:**
- (a) For exhibits to pleadings and motions, see General Procedure A(1)(b). For exhibits for use at hearing or trials, unless otherwise directed to do so sooner, Counsel shall provide the Court, at its Chambers in Erie, with **three (3) “paper” copies** of the marked exhibits at least **three (3) full business days prior to the final pretrial conference, or if there is no final pretrial conference in a matter then three (3) full business days prior to the date set for the commencement of any proceeding in which exhibits are to be offered.** Each Party shall make an additional set of exhibits available for use by witnesses at the time of the taking of evidence in any proceeding. All exhibits must be marked by Counsel using appropriate exhibit labels. The labels must be marked to identify the proponent of the exhibit and the date of the proceeding in which it is used. Plaintiffs/Movants shall identify their exhibits by using *letters*. Defendants/ Respondents shall use exhibit *numbers*. *(Revised 08/23/19)*

(b) In addition to the other requirements of this Procedure, if any Party's exhibits cumulatively number, in total aggregate, in excess of 20, single-sided, pages (not including an "Exhibit List" cover page index) they shall be bound in some manner, i.e., in loose-leaf notebook or hard binding, at the time of presentation to the Court and for use during any proceeding. Also: *(Revised 11/01/15)*

(i) The lower right-hand corner of each page of the collective exhibit document shall be consecutively numbered (Bates Stamp numbering) from the first page to the last page, independent of exhibit identification numbers previously placed on exhibits.

(ii) In addition to the paper copies of exhibits, the Party shall at the same time also provide the Court, at its Chambers in Erie, with a USB drive containing the scanned exhibits in PDF format with Bates Stamp numbering that matches the 3 paper copies provided. Exhibits are NOT to be emailed to Chambers without prior Court approval. *(Revised 09/25/17)*

(iii) Filing: Exhibits should not be electronically filed prior to the hearing. Following a hearing the Court will generally issue an order requiring that each party electronically file exhibits ultimately admitted at the time of the hearing or trial. The format for electronically filing exhibits following a hearing or trial shall include a cover page with appropriate caption identifying the specifically filed exhibits. *(New 11/09/15)*

(c) Any document a Party wishes to use for impeachment purposes and not part of its case in the first instance must be delivered to Chambers in electronic medium format at least three (3) days prior to start of the proceeding to which they relate and otherwise comply with the within General Procedures relating to the pretrial submission and identification of Exhibits including the use of Bates Stamp numbering. The Party submitting impeachment materials to Chambers need not make Exhibit(s) identified as impeachment material available to the opposing Party prior to the start of the proceeding but is required to put opposing Party(ies) on notice of the submission. *(New 11/22/21)*

(18) ***Appraisal Reports.*** Through experience the Court has learned that it is much better to have an original appraisal report when determining a valuation matter rather than just a black and white copy. Such reports typically include color photographs of the subject property and comparable properties, and a black and white reproduction leaves much to be desired. Accordingly, if any Party intends to use or rely on an appraisal report in a matter, it shall supply the Court with a color original of the appraisal report ***at least three business days prior*** to the final pretrial conference, or ***at least three business days prior*** to the evidentiary hearing in matters where there is no final pretrial conference. *(Revised 08/15/14)*

(19) ***Standards for Attorneys.*** The Court expects that all attorneys appearing before it on behalf of a party at a hearing, whether a regular member of the Court's bar or admitted

pro hac vice, will be familiar with these Procedures, with the Local Rules of the Court, and with the case filings and background information relevant to the matter that is the subject of the hearing. An attorney who represents that he or she is appearing only as “local counsel” at a hearing is nevertheless expected to be fully conversant with the facts and legal issues underlying the matter that is the subject of the hearing. (New 08/30/19)

(20) ***Communication with the Court:***

(a) Outside of scheduling matters, e.g., the setting of an argument/hearing or status conference and matters of an emergency nature, communication with the Court by Counsel related to a pending matter should normally be done only by way of an electronically filed pleading, motion, brief or other document. Furthermore, given the demonstrated effectiveness of the CM/ECF system, unless otherwise directed by the Court, it is not necessary for Counsel to supply the Court with paper “courtesy” copies of filed documents. *See also General Procedure A(2), above.* (Revised 08/23/19)

(b) Although the use of letters addressed to the Court related to a pending matter is disfavored, there are certain limited circumstances in which it will be acceptable for Counsel to communicate with the Court by letter. These are: (1) for non-substantive scheduling or housekeeping matters, (2) if the Court has directed Counsel to respond to it on a matter by way of letter, and (3) where for some reason (e.g., confidentiality) the Court has directed an item to be sent directly to it, rather than filed electronically, and Counsel includes a cover letter with the submission. In circumstances where communication by letter is acceptable, Counsel should take care to copy others with the letter as necessary to avoid any improper ex parte communication issue, and are advised that it is the Court’s normal practice to docket any letters received on a pending matter. Counsel are further advised that the Court may impose a monetary sanction if the letter is docketed and appropriate CM/ECF training qualification has not been obtained by Counsel. (Revised 09/01/09)

(c) Telephone communication with the Judge’s staff on a pending matter is permissible only as to non-substantive scheduling and housekeeping matters. (Revised 09/01/09)

B. PROCEDURES REGARDING MOTION COURT HEARINGS:

(1) ***Scheduling of Hearing:*** As a general matter, most motions, applications, and other requests for relief filed in Chapter 7, 11, 12, 13 and 15 cases are to be self-scheduled. (Exceptions are noted below in Paragraph B(2).) Parties are directed to the Court’s website for dates and times that may be used for self-scheduling hearings. (Revised 08/23/19)

(a) The Moving Party shall choose a hearing date from the list provided on the Court’s website for its appropriate chapter and shall complete, file and serve a

Notice of Hearing (see ¶B(3), below). ONLY the hearing dates published by the Court shall be used. Any matters scheduled by a Moving Party for a date other than dates provided will be dismissed without prejudice to being refiled, renoticed, and rescheduled by the Moving Party in a timely manner for an authorized date. If a matter is dismissed for noncompliance, the Moving Party must serve all parties in interest with notice of the dismissal Order and cancellation of its hearing. Certificates of No Objection (CNOs) are required to be timely filed if no answer/response is filed. (Revised 08/23/19)

No documents filed less than 48 hours before a scheduled hearing will be considered by the Court at the scheduled hearing unless exigent circumstances are demonstrated in the pleading itself. (Revised 11/09/15)

- (b) The Moving Party may schedule a new motion for hearing on a date with a previously scheduled matter in front of Judge Agresti, provided appropriate service requirements are met. *(Revised 08/23/19)*
- (c) Motions for Extension of the Automatic Stay for Pittsburgh cases may be scheduled before a Pittsburgh judge if Judge Agresti does not offer a timely hearing date. Motions for Extension of the Automatic Stay for Erie cases may NOT be scheduled before a Pittsburgh Judge. The Motion should be filed and Judge Agresti will issue an Order scheduling it for hearing. Except for unique circumstances, Motions for Extension of the Automatic Stay are to be filed upon filing of the petition so as to allow for entry of an order before the expiration of 30 days. *(Revised 11/09/15)*

(2) ***Self-Scheduling Exceptions.*** *(Revised 08/23/19)*

- (a) Except with respect to those matters listed in ¶B(2)(b), below, the Moving Party shall proceed as set forth in Paragraph B(1)(a), above. *(Revised 11/09/15)*
- (b) ***MATTERS EXCLUDED FROM SELF-SCHEDULING:*** *(Revised 10/27/16)*
 - (1) Adversary Proceedings (All Motions)
 - (2) Amendments to Schedules
 - (3) Application for Appointment of Ch. 7 Trustee Atty. Pro Se
 - (4) Ch. 11, 12 & 13 Plans & Amendments
 - (5) Contempt
 - (6) Disclosure Statements for Ch 11 cases
 - (7) Emergency/Expedited Hearing
 - (8) Evidentiary Hearings
 - (9) Extensions of Time
 - (10) First Day Motions *(A Motion for Expedited Hearing should also*

accompany the filing. Chambers will advise of hearing date.)

- (11) Motion for Temporary Restraining Order
 - (12) Motions seeking relief under Sections 1113 and 1114
 - (13) Motions for Summary Judgment
 - (14) Plan Amendments
 - (15) Plan Confirmation Hearings for Ch. 11, 12, or 13
 - (16) Reconsider, Vacate, or Modify an Order
 - (17) Restrict Access/Redact Document
 - (18) Status Conference
 - (19) Termination of Wage Attachments (*Such Motions are exempt from self-scheduling if consented to by Trustee. In such case, an order will be entered upon Motion filing.*)
 - (20) Wage Attachments
- (3) **Notice of Hearing:** Except with respect to matters that require a longer notice period (such as objections to claims) at least 25 calendar days before the chosen authorized hearing date, the Moving Party shall simultaneously electronically file the motion and notice of hearing and serve same on the Chapter 13 Trustee and all other respondents and parties in interest. The motion must be filed in sufficient time to allow the 17 day response time (14 day notice and 3 days for service) required by Local Rule **and** so that the deadline for filing responses 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.
- (4) **Appearance of Counsel at Hearings:** Counsel must appear at the scheduled hearing unless the order scheduling the hearing specifically provides otherwise. Do not contact Chambers or Judge Agresti's Courtroom Deputy concerning whether a scheduled hearing has been cancelled. To determine whether a matter remains on the hearing calendar, check the calendar at www.pawb.uscourts.gov after 3:00 P.M. the day before the hearing. Orders entered by default will be posted as "removed" at the end of the hearing calendar. To verify whether a default order has been entered, check the docket. (*Revised 11/09/15*)
- (5) **Telephone Participation:**
- (a) **TELEPHONE PARTICIPATION.** For Chapter 11 cases, **only** in an effort to accommodate the Bar and reduce travel expense, the Court **may** allow Counsel and Parties located more than **one hundred (100) miles away from Pittsburgh (for a Pittsburgh case) and from Pittsburgh or Erie (for an Erie case) Courthouses** to appear by telephone for NON-EVIDENTIARY hearings. Regarding Chapter 7 cases, Ch. 7 Trustees from outside Erie County, PA will be permitted to appear by phone in Erie Division cases, **only**, if they are a Defendant/Respondent in a matter and the matter involves a dismissal hearing when a debtor(s) fails to appear. Appearances, either in person or via video

conference from Judge Agresti's Pittsburgh Courtroom, if available, is required in all other instances. *(Revised 08/23/19)*

(b) **ADVANCE NOTICE.** Parties or counsel wishing to participate in a hearing by telephone, or by video conference, where permitted, must advise the Court and opposing Parties **at least three business days prior to the hearing** in which the request to appear by phone or video conference is being made. Arrangements for telephone or video conference participation may be made by contacting **Pamela Jewell, at 814-464-9760.** *(Revised 11/01/15)*

(c) **TWO OR MORE PARTIES:**

(i) If more than one Party is to participate by telephone, the Party initiating the call must arrange to have the other Party(ies) on the line **before** connecting to the Court line.

(ii) If more than one Party is to be joined on the call, it is **required** that a **commercial telephone conference service** (i.e., Verizon, Sprint, AT&T) be used; otherwise, the transmission is often degraded to an inaudible level.

(iii) Use of a speaker phone or cell phone by any participant during the conference call is strictly prohibited.

(6) **Certificate of No Objection Procedure:**

(a) As noted in ¶B(1)(a), above, the "Certificate of No Objection" procedure is mandatory in all cases. The CNO procedure is vital to the efficient operation of Motion Court. Because of the large volume of matters requiring hearing, it is imperative for the CNO process to work effectively and eliminate the need for hearings when possible. As such, it has become necessary for the Court to strictly enforce the Local Rules requiring the use of the CNO process in all matters. *(Revised 08/23/19)*

(b) If a Certificate of No Objection is required in any case and *timely* filed, the matter may be removed from the calendar by entry of a default order. Matters in which a default order may be entered thereby cancelling the hearing, typically include: relief from stay motions, avoidance of liens motions and objections to claims. In the event that no response or answer to a particular matter has been filed, the Parties may check the Court's website (www.pawb.uscourts.gov) the afternoon before the hearing to determine if the hearing will go forward or if a default order will be entered. *(Revised 08/23/19)*

(c) If a Certificate of No Objection is not timely filed, the matter will remain on the calendar and Counsel must appear at the hearing and explain to the Court why a CNO was not timely filed. *(Revised 08/23/19)*

- (7) ***No Certification of Counsel:*** Because he views the process as unnecessary and an added burden on Counsel, Judge Agresti has decided to eliminate the use of the Certification of Counsel procedure as outlined in *W.P.A.LBR 9013-8*. Certifications of Counsel should not be filed and any that are will be disregarded. If a disputed matter is settled by agreement of the parties prior to a scheduled hearing, it may be brought to the Court's attention by other appropriate means, including the filing of a proposed consent order, a response indicating consent to the relief requested, or a motion to approve settlement. *(New 10/15/18)*

C. PROCEDURES REGARDING CHAPTER 13 MATTERS

(1) ***Cases Ready for Trustee's Final Account/Report:***

(a) In Chapter 13 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.

(b) 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.

(c) 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).

(d) Service of the Motion, including 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.

(2) ***Unexcused Failure to Attend Hearings:***

(a) An additional undue burden is placed on the system when Debtor's Counsel, without appropriate explanation or prior contact with the Trustee's Office, fails to appear at a Section 341 Meeting or conciliation/confirmation conference conducted by the Ch. 13 Trustee. *(Revised: 02/15/06)*

(b) Failure of Debtor's Counsel to attend, without either obtaining a prior order

continuing a previously scheduled Section 341 Meeting or conciliation/confirmation conference, or, in the event of an emergency, making a timely phone call to the Ch. 13 Trustee advising her of the need to reschedule the same, evidences a lack of professionalism. Failure to afford the proper courtesy due to a fellow member of the Bar in addition to unduly burdening the Ch. 13 process and the system, generally, requiring additional, unnecessary hearings is unacceptable conduct. It is this Court's policy that such conduct exposes counsel to a \$100 sanction, after notice and hearing. *(Revised 02/15/06)*

(3) ***Amendments to Plans Previously Confirmed on a Final Basis:***

(a) It is not necessary to file a Motion to Modify when an amendment to a finally confirmed Chapter 13 Plan is sought. Instead, the proponent must file a "*Notice of Proposed Modification to Confirmed Plan Dated (insert date)*," which substantially complies with *TPA Form 203* found on Judge Agresti's website, and, the proposed *Amended Chapter 13 Plan*, as the case may be, together as a single PDF document with the Notice being the first page. *(Revised 10/11/13)*

(b) If the above two items are correctly filed, the proposed amendment will follow the Court's standard conciliation/confirmation process. Of course, when Counsel serves the *Amended Plan* on all creditors, Counsel should also serve the *Notice of Proposed Modification* as well and file a Certificate of Service. *(Revised 10/11/13)*

(c) If Counsel fails to include the Notice of Proposed Modification to Confirmed Plan as the first page of the PDF, then the Court will issue a text order and allow 10 days to file the documents correctly. Failure to timely make the correction will result in the entry of an Order denying confirmation of the Amended Plan without prejudice for failure to adhere with these procedures. *(Revised 08/15/14)*

(d) *Note:* To avoid duplicate service, debtor(s) should not serve copies of the *Notice* and *Amended Plan* until after receiving the Order Scheduling Dates for Hearing on and Objection to Amended Plan. *(Revised 10/11/13)*

D. PROCEDURES REGARDING CHAPTER 11 MATTERS

- (1) First Day Motions are to be accompanied by a Motion for Expedited Hearing in compliance with Procedure A(3), above. *See also W.P.A.LBR 9013-2*. The matters will then be scheduled by Chambers. First Day Motions in Complex Chapter 11 cases will be handled consistent with the Court's Standing Order concerning Complex Chapter 11 Cases. ***(LINK TO S.O. 18-204)*** *(Revised 06/12/19)*
- (2) In cases where the Debtor is granted permission to continue using a pre-petition checking account, Debtor-in- Possession (DIP) checks are to be numbered with a fifty (50) number gap in sequence. *(Revised 08/23/19)*

- (3) In the event the Debtor(s) wishes the case to proceed under Subchapter V but did not elect to proceed under Subchapter V of Chapter 11 in the Voluntary Petition, the Debtor shall file a Motion to Elect Subchapter V Treatment which indicates that the Debtor(s) is eligible under *11 U.S.C. § 1182(1)*. *(Revised 11/23/2020)*

E. PROCEDURES REGARDING CHAPTER 12 MATTERS *(New 08/23/19)*

- (1) Judge Agresti has substantially restructured how Chapter 12 cases are handled in his Court. Upon the filing of the case, a comprehensive Administrative Order is issued directing the Debtor as to the appropriate form Plan and Confirmation to be used as well as the completion and filing of other relevant documents. Once the Chapter 12 Trustee is appointed, a detailed Administrative Order concerning the duties and responsibilities of the Trustee are identified. Judge Agresti requires strict adherence to these procedures.
- (2) In accordance with the requirements of the Chapter 12 Administrative Order now currently issued in all Chapter 12 cases (see Paragraph (1), above), a Disclosure Statement containing the financial information of the Debtor(s) is now required to be filed contemporaneously with the Chapter 12 Plan and Plan Summary.
- (3) The Court requires the Chapter 12 Plan Confirmation Order to be substantially in compliance with the Court's form order (*TPA Form 049*). The Court has also posted several other form orders/certifications to be used in Chapter 12 cases (*TPA Forms 50-54*).