

JUDICIAL PRACTICES AND PROCEDURES

THE HONORABLE ROBERT N. OPEL, II

Judge Opel was appointed to the United States Bankruptcy Court for the Middle District of Pennsylvania on September 28, 2006. Judge Opel received his B.A. from SUNY at Oswego and his J.D. from Temple Law School.

A. REVIEWING COURT’S WEBSITE

All parties and counsel are encouraged to view the contents of the Court’s website: www.pamb.uscourts.gov. The website allows access to all the Judge’s hearing calendars, Local Bankruptcy Rules and Forms. The site also lists the Court’s locations. The “For Attorneys” tab provides instruction for telephonic court appearances, as well as instructions for filing self-scheduled matters. Links are provided to the National bankruptcy forms. Also, the “E-Filing” button provides access to the Court’s electronic document filing system.

B. GENERAL MATTERS

1. Correspondence with the Court

Judge Opel discourages counsel from communicating with the court through any means other than formal motions which concern substantive issues. All correspondence that relates to Judge Opel’s hearing calendar should be directed to his Courtroom Deputy and/or Judicial Assistant.

2. Communications with Law Clerks

Judge Opel discourages counsel from initiating communications with his Law Clerk. The scheduling of trials, hearings, and conferences is the responsibility of Judge Opel’s Courtroom Deputy and/or Judicial Assistant.

3. Telephone Conferences

Judge Opel permits the telephonic appearance of all parties in any matter before him. CourtCall, an independent conference call company, provides a call-in number. The procedures for telephonic appearance are detailed on the Court’s website under the “For Attorneys” tab.

4. Submission of Documents to Chambers

A document will not be considered as filed with the Court and will not be acted upon unless properly filed with the Clerk’s office. Documents may not be submitted to Chambers by facsimile, e-mail, or other means unless a party is submitting a notice of intention to file an emergency motion pursuant to Local Bankruptcy Rule 9075-1(a)(1) or has obtained prior approval from Chambers.

5. Pro Hac Vice Admissions

Judge Opel handles all written requests for admission pro hac vice in accordance with Local Bankruptcy Rule 2090-1(b). Oral motions may be made in open court at the time of hearing or trial.

6. No Chambers Copies of Filed Papers

Parties should not submit to Chambers “courtesy” copies of pleadings, memoranda of law, or any other filed documents.

7. Chapter 11 Small Business Debtors

A 105(d) Scheduling Order is entered in each of Judge Opel’s Chapter 11 small business debtor cases. That order sets deadlines for any plan of reorganization or disclosure statement. It also sets forth the original exclusivity period during which only the debtor may propose a plan.

8. Filing of Papers, Amendments, Etc. Within Twenty-Four (24) Hours of Hearing

In the interest of collegiality, Judge Opel strongly discourages the filing of amendments, pleadings, briefs, exhibits, etc. within twenty-four (24) hours of a hearing, without a showing of exigent circumstances. Filings docketed within twenty-four (24) hours of hearing may not be considered at the time of hearing, at the Court’s discretion. It is also strongly recommended that CourtCall appearances be entered more than twenty-four (24) hours prior to the hearing.

9. Hearing Locations

Judge Opel conducts hearings in Wilkes-Barre and Williamsport, Pennsylvania. Generally, hearings are scheduled in the venue where the petition was filed. Expedited matters or matters which must be decided within a statutory time limit will be scheduled on the next available date in either venue.

C. LITIGATION GENERALLY

The following practices and procedures pertain to litigation generally, whether hearings in contested matters, trials in adversary proceedings, or any other matter that results in a court appearance.

1. Continuances and Extensions

Pursuant to Local Bankruptcy Rule 9013-3, parties seeking a continuance must contact all parties and counsel to obtain concurrence in the requested continuance. Requests with concurrence should be filed to the docket, using Local Bankruptcy Form 9013-3, if it is a first-time request. Any subsequent request must be made by a motion to continue, with attached certificate(s) of concurrence of all parties. Any request in which concurrence has not been obtained may be set for hearing or may be denied without hearing. Requests received within twenty-four (24) hours

of the hearing will be considered at the Court's discretion. Parties are expected to appear as scheduled if a request for continuance is denied.

2. Settlements

a. Referral of Matters to Mediation

At the request of all parties, Judge Opel will assign a case to a mediator pursuant to Local Bankruptcy Rule 9019-2. Requests for mediation should be made by completing and filing to the docket Local Bankruptcy Form 9019-2. A qualified Chapter 13 debtor may seek to participate in the Court annexed Mortgage Modification Mediation Program by filing a motion pursuant to Local Bankruptcy Rule 9019-3.

b. Requests for a Settlement Conference with Another Bankruptcy Judge

Requests for a settlement conference to be conducted by another Judge in the District should be made in writing and filed to the docket.

3. Opening and Closing Statements

Judge Opel prefers that any opening and closing statements be brief and concise. It is suggested that argument on a matter which has already been briefed be limited to major points or new case or statutory authority.

4. Filing Memoranda of Law

a. Before Hearing or Trial

Unless specifically ordered to the contrary, memoranda of law need not be filed prior to a hearing or trial. If a party chooses to file a pre-hearing or pre-trial memorandum, the party should file said memorandum at least two (2) days prior to hearing or trial, with service upon any opposing party.

b. After Hearing or Trial

If post hearing or trial memoranda of law are required, parties will be directed when to file by an order entered after the hearing or trial.

5. Witnesses

a. Examination of Witnesses or Argument by More Than One Attorney

Judge Opel prefers that a witness be examined by only one attorney for each party.

b. Examination of Witnesses Beyond Re-Direct and Re-Cross

Judge Opel discourages the examination of witnesses beyond re-direct and re-cross.

c. Testimony by Telephone or Video

Judge Opel prefers that all witnesses to be called to testify appear in person to give their testimony. Telephonic or video testimony by a witness will be permitted pursuant to the requirements of Local Bankruptcy Rule 9074-1.

6. Marking and Exchanging of Exhibits; Number of Copies

Exhibits must be pre-marked and exchanged with opposing counsel prior to any hearing or trial. At hearing or trial, counsel must provide sufficient copies for Judge Opel, his Law Clerk, his Courtroom Deputy, and all the parties. In the case of exhibits exceeding fifteen (15) in number, exhibits should be presented in a binder pursuant to Local Bankruptcy Rule 9070-1. Further, when exhibits exceed twenty-five (25) in number, counsel must contact Chambers at least three (3) weeks in advance of hearing or trial to determine if electronic display of exhibits is appropriate. Failure to timely exchange proposed exhibits in accordance with Rule 9070-1 may result in the exclusion of any unexchanged exhibits. Judge Opel's Courtroom Deputy will send an email to all parties involved in advance of any evidentiary hearing or trial regarding these requirements.

7. Electronic Display of Exhibits

Any party who wishes to electronically display exhibits must consult Local Bankruptcy Rule 9070-1(b), as amended, and follow the procedures specified in that Rule, as well as on the Court's website: www.pamb.uscourts.gov.

8. Documents Under Seal

Requests for documents to be sealed shall be made in accordance with Local Bankruptcy Rule 9018-1.

9. Evidentiary Hearings

Pursuant to Local Bankruptcy Rule 9073-1, any hearing can be an evidentiary hearing at which witnesses may testify. Parties intending to present witnesses and testimony at hearing should contact **any opposing party, as well as** Judge Opel's Judicial Assistant no less than three (3) business days prior to the hearing date. Counsel should then advise of the number of witnesses each party intends to call at hearing, as well as the estimated time the hearing will require to be heard.

10. Motions to Extend Automatic Stay

Pursuant to Local Bankruptcy Rule 4001-5, an affidavit of changed circumstances may be filed no less than two (2) days prior to hearing on said motion. Failure to file an affidavit will result in the hearing being held as scheduled.

D. UNCONTESTED MATTERS

When a motion or application is uncontested because no responsive pleading was filed by the deadline set forth in the notice or order, Judge Opel may enter an order granting the relief requested. Due consideration will be given to the manner of the notice of hearing. Examples are a hearing will be held notice, semi-passive notice, or passive notice.

E. ADVERSARY PROCEEDINGS

1. Discovery Matters

a. Length of Discovery Period and Extensions

After an answer to the complaint is filed, a scheduling order will be entered establishing a discovery deadline. If all parties consent to an extension, a stipulation extending discovery may be filed, accompanied by a proposed order approving the stipulation. If concurrence to the extension cannot be obtained, a motion to extend deadline must be filed, prior to the expiration of the original discovery deadline, and a hearing will be held. Extension of the discovery deadline may affect all subsequent deadlines contained in the scheduling order, including the trial date.

b. Discovery Dispute Resolution

If a discovery dispute arises that the parties cannot resolve among themselves, the dispute must be resolved by motion practice. Judge Opel expects all parties to comply with the requirements of F.R.B.P. 7026 regarding the duty to confer prior to the filing of discovery motions.

c. Confidentiality Agreements

Confidentiality agreements will be considered by Judge Opel pursuant to 11 U.S.C. § 107. For documents filed under seal, refer to Local Bankruptcy Rule 9018-1.

2. Scheduling of Trials

A trial date will be set by a scheduling order entered after the answer has been filed in an adversary proceeding.

3. Briefing Schedules for Dispositive Motions

Judge Opel will enter a briefing schedule on a motion to dismiss, a motion for summary judgment, or a motion for judgment on the pleadings. Judge Opel may hold a hearing before deciding such a dispositive motion.

4. Settlement Discussions in Matters Under Advisement.

When settlement discussions are commenced in a matter under advisement, please notify Judge Opel's Judicial Assistant so that a decision on the proceeding can be deferred until the conclusion of settlement negotiations. Counsel should notify Judge Opel's Judicial Assistant when settlement negotiations are concluded, whether successfully or unsuccessfully.

5. Mediation

Parties in adversary proceedings may utilize the mediation or settlement judge procedures described in Paragraph C.2. above.

F. EXPEDITED CONSIDERATION

Pursuant to Local Bankruptcy Rule 9075-1(a)(1), a party wishing to file a motion for emergency hearing or expedited consideration must contact Judge Opel's Chambers at [Chambers of Judge Robert Opel@pamb.uscourts.gov](mailto:Chambers_of_Judge_Robert_Opel@pamb.uscourts.gov) prior to filing such motion. The underlying substantive motion must be attached as an exhibit to the motion for emergency hearing. When an expedited hearing is scheduled, then the underlying substantive motion must be filed.