

## **JUDICIAL PRACTICES AND PROCEDURES**

### **JUDGE HENRY W. VAN ECK**

Judge Van Eck was appointed to the United States Bankruptcy Court for the Middle District of Pennsylvania on April 6, 2017. He received his B.S. from Susquehanna University in 1995 and his J.D. from Widener University School of Law in 1998.

### **A. GENERAL MATTERS**

#### **1. Contacting Chambers.**

##### **a. General rule**

If an issue is not addressed in the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, the court's website, or this practices and procedures guide, counsel and pro se parties may contact Judge Van Eck's law clerks by telephone or email for assistance as follows:

Chambers\_of\_Judge\_Henry\_Van\_Eck@pamb.uscourts.gov (717) 901-2845

Judge Van Eck's law clerks are not permitted to give legal advice or discuss the merits of pending matters.

##### **b. Scheduling issues**

Other than a motion for an emergency order filed under Local Bankruptcy Rule 9075-1, all questions concerning the scheduling of hearings should be directed to Judge Van Eck's Courtroom Deputy as follows:

Tonia Wilson      Tonia\_Wilson@pamb.uscourts.gov      (717) 901-2818

Notice that a party intends to file an emergency motion or request for expedited hearing, and questions concerning these matters (including Chapter 11 "first day" motions), should be directed to one of Judge Van Eck's law clerks. Counsel should note that Local Bankruptcy Rule 9075-1(a)(1) requires a party to contact chambers by email notification before filing a motion for an expedited hearing email address:

Chambers\_of\_Judge\_Henry\_Van\_Eck@pamb.uscourts.gov

The underlying substantive motion must be attached as an exhibit to the motion for an emergency hearing. Once the expedited hearing is scheduled, the underlying substantive motion should be filed.

##### **c. Post hearing orders**

If requested by Judge Van Eck, counsel may submit orders to chambers by email at the Chambers email listed above, with copy to all parties to the matter.

d. Submission of documents by facsimile

Documents may not be submitted by facsimile unless previously approved by Judge Van Eck. Procedures for filing documents with the clerk by facsimile transmission are set forth in Local Bankruptcy Rule 5005-5.

2. Remote Appearances

In accordance with Local Rule 9074-1, counsel and pro se parties may appear remotely at hearings and conferences using Zoom. Parties intending to appear by Zoom must comply with the procedures described at the court's website: <http://www.pamb.uscourts.gov/remote-appearance-guide>.

3. Calendar

Judge Van Eck's calendars are posted on the court website. Most weeks Judge Van Eck holds Miscellaneous Hearings on Tuesday and Trials on Thursday. Chapter 13 Confirmation and other related Chapter 13 matters are heard on Wednesdays, typically twice a month. Hearings are not routinely scheduled for Mondays or Fridays. Multiple day hearings are scheduled when requested by the parties or deemed necessary by Judge Van Eck. Hearings are held in the courtroom on the third floor of the Ronald Reagan Federal Building and Courthouse in Harrisburg. Judge Van Eck's Courtroom Deputy posts a yearly calendar to the court's website describing dates when court will be convened during the year. Adjustments to the calendar are made frequently, and new calendars are posted regularly. Calendars listing specific matters scheduled to be heard are posted for the current and following week.

4. Chambers Copies of Filed Papers

Courtesy hard copies of documents should not be provided unless requested by chambers.

5. Formatting of Proposed Orders

All orders are signed and dated electronically. No open spaces for text or underlining should be included. At least two inches should be left at the bottom of the proposed order for the insertion of the electronic signature and order date. At least one line of text must be included on the page that will bear Judge Van Eck's signature and the date of the order.

## **B. LITIGATION GENERALLY**

### **1. Continuances**

Parties seeking a continuance must comply with the provisions of Local Bankruptcy Rule 9013-4. Requests or motions to continue received by the Court within 24 hours of the hearing may not be granted unless one of the parties appears at the hearing either in person or telephonically to request the continuance.

### **2. Settlements**

If parties wish to cancel a hearing because they have reached a settlement in advance of the hearing, a Request to Remove form (Local Bankruptcy Form 9019-1) must be filed no later than 24 hours before the hearing. If a settlement is reached within 24 hours of the hearing, one of the parties must appear at the hearing either in person or telephonically to announce the settlement. Judgment may be rendered against the moving party if Form 9019-1 has not been filed 24 hours prior to the hearing and no one appears at the hearing.

### **3. Alternative Dispute Resolution**

#### **a. Referral of matters to mediation**

At the request of all parties, Judge Van Eck will assign a matter to a mediator as provided in Local Bankruptcy Rule 9019-2. Parties seeking the appointment of a mediator should complete and file Local Bankruptcy Form 9019-2. Chapter 13 debtors who qualify to participate in the court's Mortgage Modification Mediation Program should follow the procedures set forth in Local Bankruptcy Rule 9019-3.

#### **b. Requests for a settlement conference with another bankruptcy judge**

Upon joint motion of the parties, Judge Van Eck will request another bankruptcy judge in the district to conduct a settlement conference in a particular matter.

### **4. Opening and Closing Statements**

Judge Van Eck encourages the use of opening statements, which should be no longer than 3-5 minutes. Opening Statements should include the following: (1) a statement of the issue(s) to be decided; (2) a statement of the governing statute(s), and/or a statement of the guiding legal principles from relevant case law relied upon; (3) an assertion of the burden of proof, and who carries it; (4) a list of exhibits and witnesses to be presented; and (5) a concise statement of how each exhibit or witness will help resolve the issue to be decided pursuant to the governing statute(s) or relevant case law.

5. Filing Memoranda of Law

a. Before evidentiary hearing or trial

Judge Van Eck does not require the parties to file memoranda of law prior to an evidentiary hearing or trial.

b. After hearing or trial

If necessary, Judge Van Eck will set a briefing schedule at the conclusion of a hearing or trial for the filing of post-trial briefs.

6. Testimony by Telephone or by Video

Testimony by telephone or by video is not favored unless the witness is incarcerated or is physically incapacitated. Telephonic or video testimony by a witness may be permitted under Local Bankruptcy Rule 9074-1.

7. Marking and Exchanging Exhibits; Number of Copies

a. Exchanging of Exhibits

All exhibits must be exchanged with opposing counsel no less than 72 hours (or 3 full business days) prior to any hearing or trial. Notice of Electronic Filing delivered through the Electronic Case Filing system ("ECF") is effective upon all ECF Filing users in the particular matter pursuant to Miscellaneous Order 5:05-mp-50007 and as promulgated by Administrative Procedure III. Electronic Filing and Service of Documents <http://www.pamb.uscourts.gov/content/administrative-procedures>). Timely filed exhibits which are attached to a Pre-Trial/Hearing Statement (if any) are therefore deemed exchanged upon the filing of same. Exhibits larger than 5 MB must be exchanged directly with opposing counsel no less than 72 hours (or 3 full business days) prior to any hearing or trial. Parties with exhibits subject to privacy protection must advise opposing counsel of the same by the above deadline to determine how such exhibits will be exchanged and treated during the hearing or trial. In the event that the parties are unable to agree upon how to exchange any exhibit, the parties should immediately contact one of Judge Van Eck's law clerks and request a pre-trial/hearing conference.

b. Number of Copies

All original exhibits must be used when examining witnesses and will be retained by the Courtroom Deputy at the conclusion of each day of the hearing. Counsel must have sufficient copies of each exhibit to provide a copy to Judge Van Eck and to all parties. As provided in Local Bankruptcy Rule 9070-1, when a party intends to introduce more than 15 exhibits, they should be presented in a binder. Any exhibit not exchanged with opposing counsel at least 72 hours (or 3 full business days) prior to the hearing may be excluded upon motion of the opposing party.

## 8. Evidentiary Hearings

Local Bankruptcy Rule 9073-1 provides that any hearing can be an evidentiary hearing at which witnesses may testify. All matters scheduled to be heard on a Miscellaneous Hearings day may be tried on that date, provided, however, that all parties have exchanged exhibits as required by paragraphs 5 and 7 above. Parties who would like their contested matter to be heard on a Trial date rather than a Miscellaneous Hearings date, should inform the Courtroom Deputy. Objections to confirmation, to modification of Chapter 13 plans, and to claims that require the testimony of witnesses, will not be heard on the Chapter 13 confirmation hearing date, but will be scheduled for a later Trial date.

### **C. UNCONTESTED MATTERS**

Whenever a motion or application is uncontested because no responsive pleading was filed by the deadline set forth in the notice or order, Judge Van Eck may enter an order granting the relief requested. However, if a hearing date is set in the notice, the hearing is not contingent upon the filing of a responsive pleading. Therefore, if an order granting the relief requested in a motion or application is not entered before the hearing date, counsel is expected to appear at the scheduled hearing.

### **D. ADVERSARY PROCEEDINGS**

#### 1. Scheduling Conference

After an answer to a complaint is filed, Judge Van Eck will issue an order setting a scheduling conference, which is held approximately 30 days after the answer is filed. The purpose of the scheduling conference is to frame the issues to be decided, to establish appropriate guidelines for discovery considering the nature of the matter to be tried, and to set a trial date. The form order setting the scheduling conference is attached as Exhibit "A." After the scheduling conference, Judge Van Eck will issue a scheduling order incorporating the deadlines discussed at the scheduling conference. The form scheduling order is attached as Exhibit "B".

#### 2. Discovery Dispute Resolution

All disputes as to discovery that the parties are unable to resolve themselves will be heard by Judge Van Eck upon the filing of an appropriate motion.

#### 3. Resolution of Dispositive Motions

As provided in Local Bankruptcy Rule 7002.1, dispositive motions, supporting affidavits and other documents, and briefs should be filed in accordance with the Middle District Rules 7.1-7.8. If an order on a dispositive motion has not been entered within 14 days of the date scheduled for trial, the parties may file a motion requesting a continuance of the trial date.

**UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**Debtor(s)**

Chapter:

**Plaintiff(s)**

Case No.:

vs.

Adversary

No.:

**Defendant(s)**

**Order Setting Scheduling Conference**

1. A scheduling conference is set for:

United States Bankruptcy Court Ronald Reagan Federal Building, Bankruptcy Courtroom (3rd Floor), Third & Walnut Streets, Harrisburg, PA 17101	Date: Time: 9:30 a.m.
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Counsel and unrepresented parties may attend in person or by telephone using CourtCall as provided on the Court's website.

2. Counsel attending the conference must be authorized by their clients to make stipulations and admissions about all matters that can reasonably be anticipated for discussion.
3. The court may consider and take action to formulate and simplify issues and eliminate frivolous claims or defenses.
4. Counsel and unrepresented parties should be prepared to discuss all matters for consideration set forth in Fed. R. Civ. P. 16(c)(2) that would be applicable in a bankruptcy proceeding including:
- A. Scheduling deadlines for discovery;
  - B. Obtaining admissions and stipulations about facts and documents;
  - C. Identifying witnesses and documents;
  - D. Setting deadlines for the filing of motions *in limine* or dispositive motions;
  - E. Setting deadlines for amending pleadings and joining other parties;
  - F. Referring the case or any issues within the case to a mediator or settlement judge;
  - G. Setting a trial date.
5. Except as otherwise order by the court, Fed. R. Civ. P. 26(d)(1) and 26(f) will not apply in this proceeding. The deadlines for disclosure required under Fed R. Civ. P. 26(a)(1), (a)(2) and (a)(3)(A) will be set at the scheduling conference.

6. Counsel for each party should be prepared to indicate whether they will consent to the entry of final orders or judgments by this court on any issue in this proceeding, whether or not designated as "core" under 28 U.S.C. §157(b)(3), or whether they wish to proceed to trial before this court with the submission of findings of fact and conclusions of law on specific issues to the District Court.
7. Pursuant to Fed. R. Civ. P. 16(b)(3), the court will issue a scheduling order following the scheduling conference.

Dated:

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

IN RE:	:	
	:	Chapter
Debtor	:	
	:	Case No.
	:	
Plaintiff	:	Adversary No.
v.	:	
	:	Nature of Proceeding
Defendant	:	

**SCHEDULING ORDER**

Upon consideration of the pleadings filed in the above captioned matter, **IT IS HEREBY ORDERED THAT:**

1. Disclosure of information required under Fed. R. Civ. P. 26(a)(1), (a)(2) and (a)(3)(A) shall be completed within thirty (30) days from the date of this Order.
2. All discovery shall commence immediately and be completed within ninety (90) days from the date of this Order.
3. On or before the close of discovery, the parties must submit a joint statement as to whether they consent to participation in the court-annexed mediation program. In the consent to mediation, parties may request a particular mediator previously certified by the Court who has consented to conduct the mediation for the parties. A list of certified mediators is included on the Court's website.
4. Dispositive motions must be filed on or before thirty (30) days after the close of discovery in accordance with L.B.R. 7002-1 and 7056-1.
5. All requests to join other parties or to amend the pleadings must be filed within ninety (90) days from the date of this Order.
6. A request for a settlement conference to be conducted by a bankruptcy judge not assigned to this matter must be filed on or before forty-five (45) days before trial.
7. A final pretrial conference shall be held on \_\_\_\_\_ at 9:30 a.m. in the United States Bankruptcy Court for the Middle District of Pennsylvania, Bankruptcy Courtroom Number One, Third Floor, Ronald Reagan Federal Building and Courthouse, Third and Walnut Streets, Harrisburg, Pennsylvania 17101.
8. Seven (7) days before the final pre-trial conference, counsel must submit a short joint pretrial memorandum addressing the following:



A. Basis of the bankruptcy court's jurisdiction.

B. A statement of uncontested facts.

C. A statement of facts that are in dispute.

D. A statement of damages claimed or relief sought. Each claim for damages should be described separately as well as the amount claimed. When relief other than damages is sought, the exact form of relief sought shall be described.

E. Legal issues presented and the constitutional, statutory, and decisional authorities relied on. The burden of proof on each legal issue must be addressed.

F. Names and addresses of witnesses with expert witnesses identified as experts and with a summary of qualifications. A brief summary of the evidence to be presented by each witness must be included.

G. A list of all exhibits to be offered into evidence, prepared and numbered as required by L.B.R. 9070-1.

H. A list of all discovery items and depositions to be offered into evidence. Excerpts from deposition testimony shall be designated by page.

I. Estimated trial time.

9. Any motions *in limine* must be filed and served at least seven (7) days before trial. The Court may reserve ruling on the motion until the date of trial.

10. Any trial briefs must be filed and served at least seven (7) days before trial.

11. Trial is scheduled for at 9:30 a.m. in the United States Bankruptcy Court for the Middle District of Pennsylvania, Bankruptcy Courtroom Number One, Third Floor, Ronald Reagan Federal Building and Courthouse, Third and Walnut Streets, Harrisburg, Pennsylvania 17101.

12. The deadlines set forth in this Order may be modified only upon stipulation by the parties and approval by the Court or upon Motion filed by a party and approval by the Court.