

## JUDICIAL PRACTICES AND PROCEDURES

### Chief Judge Mary D. France

Judge France was appointed to the United States Bankruptcy Court for the Middle District of Pennsylvania on March 3, 2003. She was appointed to a seven-year term as Chief Judge on July 29, 2009. Judge received her B.A. from Wake Forest University in 1971 and her J.D. from the Dickinson School of Law in 1982.

#### A. GENERAL MATTERS

##### 1. Contacting Chambers.

###### a. General rule

Chambers staff may be contacted by regular mail, email, or telephone unless the issue should be raised by motion and only if guidance is not otherwise available in the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules, the court's website, or this practices and procedures guide. If an issue is not addressed in any of these resources, counsel and pro se parties may contact Judge France's law clerks – John Kelly ([john\\_kelly@pamb.uscourts.gov](mailto:john_kelly@pamb.uscourts.gov) and 717-901-2840) and Vera Kanova ([vera\\_kanova@pamb.uscourts.gov](mailto:vera_kanova@pamb.uscourts.gov) and 717-901-2840) for assistance. Judge France'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 France's courtroom deputy, Joan Goodling ([joan\\_goodling@pamb.uscourts.gov](mailto:joan_goodling@pamb.uscourts.gov) or 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 France's law clerks ([john\\_kelly@pamb.uscourts.gov](mailto:john_kelly@pamb.uscourts.gov) or [vera\\_kanova@pamb.uscourts.gov](mailto:vera_kanova@pamb.uscourts.gov) and 717-901-2840). Counsel should note that Local Bankruptcy Rule 9075-1(a)(3) requires a party to contact chambers by telephone **before** filing a motion for an expedited hearing. Judge France suggests that if you are unable to speak directly with one of her law clerks, you should provide the required notice to chambers through email to the chambers' email address ([chambers\\_of\\_judge\\_mary\\_d\\_france@pamb.uscourts.gov](mailto:chambers_of_judge_mary_d_france@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 France, counsel may submit orders to chambers by email ([chambers\\_of\\_judge\\_mary\\_d\\_france@pamb.uscourts.gov](mailto:chambers_of_judge_mary_d_france@pamb.uscourts.gov)). All orders submitted must be copied on all parties to the matter.

d. Submission of documents by facsimile

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

2. Telephone Conferences

Counsel and pro se parties may appear telephonically at hearings and conferences using the CourtCall system according to the procedures described at the court's website. Counsel making a telephonic appearance must use a land line and may not place the call on speaker phone. Please note that arrangements to appear by telephone must be made with CourtCall at least 24 hours prior to the time of the scheduled hearing or conference. Further, if counsel is an ECF filer and intends to appear by telephone, no later than 5:00 PM the day before the hearing a virtual entry must be docketed stating that counsel intends to appear by telephone. Failure to comply with these deadlines may result in a bar to future appearances by telephone.

3. Calendar

Judge France's calendars are posted on the court website. Most weeks Judge France 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 France. Hearings are held in the courtroom on the third floor of the Ronald Reagan Federal Building and Courthouse in Harrisburg. Judge France'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 France'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. If a request or motion to continue is received by the Court within 24 hours of the hearing, it will not be granted unless one of the parties appears at the hearing 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 France 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 France will request another bankruptcy judge in the district to conduct a settlement conference in a particular matter.

### 4. Opening and Closing Statements

Judge France may request opening and closing statements. In the absence of a request, they are not required. If given, they should be brief.

### 5. Filing Memoranda of Law

#### a. Before hearing or trial

Memoranda of law need not be filed prior to a hearing or trial. If a memorandum is submitted, it must be served on the opposing party and filed so that it will be docketed at least 24 hours before the hearing or trial.

b. After hearing or trial

Judge France generally 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

Generally 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

Exhibits must be pre-marked and exchanged with opposing counsel prior to any hearing or trial. All original exhibits must be used when examining witnesses and 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 France 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 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. However, parties who intend to try a matter should inform the Courtroom Deputy, two business days prior to the date of the hearing of the number of witnesses to be called and the estimated time required to hear the matter. At any earlier time parties are unable to settle a contested matter and wish to have it placed on a Trials day rather than a Miscellaneous Hearings date, they should inform the Courtroom Deputy that they wish to have the matter heard on a Trials day and provide information on the number of witnesses to be called and the estimated time required to hear the matter. 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 Trials day.

### **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 France 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, and an order granting the relief requested 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 France 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 France 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 France 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.

## **E. Specific Proceedings**

### **1. Chapter 13 Cases**

#### **a. Amended Chapter 13 plans filed prior to confirmation hearing**

As provided in 11 U.S.C. § 1324, the first confirmation hearing set will be convened notwithstanding the filing of an amended plan prior to the date of the confirmation hearing. Counsel is not required to personally appear at the confirmation hearing if the filing of the amended plan is included on the pre-confirmation hearing report posted by the Chapter 13 Trustee. If the amended plan is not included on the Trustee's report, counsel must appear at the confirmation hearing.

#### **b. Continuances of confirmation hearings**

As provided in 11 U.S.C. § 1324, the first confirmation hearing set will be convened notwithstanding the filing of a request to continue the hearing. Counsel is not required to personally appear at the confirmation hearing if the request to continue is noted on the pre-confirmation hearing report posted by the Chapter 13 Trustee. If the request to continue is not included on the Trustee's report, counsel must appear at the confirmation hearing.

c. Motions to modify confirmed Chapter 13 plans

If a motion to modify a confirmed Chapter 13 Plan is filed and the proposed modified plan includes a request for additional attorneys' fees, the request must be disclosed in the body of the motion.

2. Chapter 11 Cases

a. Small business cases

A scheduling order is entered in each Chapter 11 case in which the debtor indicates on the petition that it is a small business debtor. The scheduling order is attached as Exhibit "C."

b. Initial status conference

Judge France sets an initial status conference in all Chapter 11 cases, which is held on or near the date of the creditors' meeting. The conference is held on the record, but the proceeding is informal. Debtor and counsel are required to appear. Creditors and other interested parties may appear, but are not permitted to examine the debtor. The order setting the conference, which describes the issues to be addressed, is attached as Exhibit "D."

c. "First day" orders

Matters that are required to be heard on an expedited basis in a new Chapter 11 case, such as cash collateral motions, motions to continue the use of utilities, and motions to pay pre-petition wages, are subject to Local Bankruptcy Rule 9075-1. If counsel wishes to have several substantive motions heard at the same time, only one motion for expedited consideration is required attaching as exhibits all substantive motions to be considered. Once a hearing date is provided by chambers, the substantive motions should be filed.

3. Motions for Sale Free and Clear of Liens and Encumbrances

If a party intends to include in the order approving the sale a finding under 11 U.S.C. § 363(m) and the *Abbotts Dairy* case that the buyer is a good faith purchaser, the party must be prepared to provide testimony or to proffer testimony to establish the purchaser's good faith. In cases in which the property to be sold is real estate and the buyer has been obtained through a real estate agent approved by the Court, at the Court's discretion the 11 U.S.C. §363(m) and *Abbotts Dairy* language may be approved without a hearing if the movant submits an affidavit from the real estate agent containing the following information –

- (1) the length of time the property was marketed
- (2) the means or media through which the marketing was accomplished
- (3) the asking price of the property and how it was determined
- (4) the appraised value if available
- (5) whether the purchaser is an insider under the Bankruptcy Code

- (6) the number and amount(s) of any other bids, and
- (7) for any higher bids rejected, the reason(s) why they were rejected

In the absence of an objection to the sale or the filing of an affidavit acceptable to the Court, the hearing will remain on the calendar if *Abbotts Dairy or §363(m)* language is included in the proposed order. If counsel for the movant fails to appear and no objections are filed, Judge France will sign the proposed order, but will strike the finding of good faith.

#### 4. Motions or Stipulations for Relief from the Automatic Stay

##### a. Waiver of Fed. R. Bankr. P. 3002.1

Judge France will not sign proposed orders including a waiver of the provisions of Fed. R. Bankr. P. 3002.1.

##### b. Waiver of Fed. R. Bankr. P. 4001

Unless the parties agree to the waiver of Fed. R. Bankr. P. 4001 in a stipulation executed by the parties, Judge France will strike the waiver language before signing the proposed order approving the stipulation.

##### c. Signature of Chapter 13 Trustee

Stipulations granting the movant relief from the automatic stay in Chapter 13 cases must be signed by the Chapter 13 trustee, in addition to the debtor, unless a Chapter 13 plan has been confirmed that provides for the vesting of property in the debtor at confirmation.

Exhibit A - Form Order Setting the Adversary Scheduling Conference

orschcon(04/13)

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF PENNSYLVANIA

Debtor(s)

Chapter:

Case No.:

Plaintiff(s)

Adversary No.:

vs.

Defendant(s)

Order Setting Scheduling Conference

1. A scheduling conference is set for:

Table with 2 columns: Location (United States Bankruptcy Court, Ronald Reagan Federal Building, Bankruptcy Courtroom (3rd Floor), Third & Walnut Streets, Harrisburg, PA 17101) and Time/Date (Date: Time:)

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.

## Exhibit A - Form Order Setting the Adversary 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:**

} Debtor	Chapter
	Case Number:
} Plaintiff	Adversary No:
v.	Nature of
} Defendant	Proceeding:

**SCHEDULING ORDER**

**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.

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

**IN RE:** : **CHAPTER 11**  
: **Debtor** : **CASE NO.**

**SMALL BUSINESS DEBTOR SCHEDULING ORDER**

**UPON CONSIDERATION** of the Amendment to Designate Debtor as a small business debtor, and after an initial status conference, it is hereby:

ORDERED that the following dates shall govern the above-captioned case:

1. Debtor shall have the exclusive opportunity to propose a plan until 201 .
2. Any plan or disclosure statement shall be filed no later than **201** .
3. Debtor may seek conditional approval of a disclosure statement pursuant to 11 USC §1125(f) and Fed. R. Bankr. P. 3017.1.
4. The plan, any approved disclosure statement, and a ballot shall be sent to creditors and parties in interest at least **twenty-eight (28) days** before the confirmation hearing date.
5. Any motion to extend the confirmation date must strictly comply with the requirements set forth in 11 U.S.C. §1121(e)(3).
6. Any request to excuse senior management from attending any meetings scheduled by the Court, as defined by 11 U.S.C. §1116(2), must be made at least **fourteen (14) days** in advance of the scheduled meeting such as to give the Court time to hold a hearing on the request.
7. Any adversary proceedings to be brought by Debtor shall be promptly commenced so as not to delay the reorganization process.

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

**IN RE:** \* **CHAPTER 11**  
\*  
**Debtor** \* **CASE NO:**

**ORDER SETTING INITIAL CHAPTER 11 STATUS CONFERENCE**

Pursuant to 11 U.S.C. § 105(d), a status conference will be held on

in the United States Bankruptcy Court, Courtroom #1, 3rd Floor, Ronald Reagan Federal Building and Courthouse, 228 Walnut Street, Harrisburg, Pennsylvania. Debtor, or an authorized representative of Debtor, and counsel for Debtor shall attend the conference and shall be prepared to address the following issues:

1. The nature of Debtor's business, whether Debtor is currently operating and any changes to Debtor's operations in the year prior to filing and any anticipated changes to Debtor's operations during bankruptcy.
2. Whether Debtor expects to retain or has retained professionals other than bankruptcy counsel.
3. What critical matters should or must be addressed by Debtor within the first 120 days of filing (e.g., issues related to use of cash collateral, financing of operations, executory contracts and leases, changes to management).
4. Compliance with Fed. R. Bankr. P. 1007.
5. A deadline for filing a plan of reorganization and disclosure statement, if relevant.
6. Deadlines for filing motions to sell business as a going concern, if relevant.

## Exhibit D - Order Setting Initial Status Conference in All Ch 11 Cases

7. A deadline for filing proofs of claims and interests.
8. The status of any litigation involving Debtor.

If Debtor has not filed the required mailing matrix as of the date of this Order (see Local Bankruptcy Rule 1007-2), Debtor shall serve this Order on the parties listed in the mailing matrix at the time such matrix is filed, and file a certificate of service so reflecting.