

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 Courtroom Deputy by telephone or email for assistance as follows:

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

Judge Van Eck's Courtroom Deputy is 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 using the above contact information.

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. Judge Van Eck's law clerks are not permitted to give legal advice or discuss the merits of pending matters. Counsel should note that Local Bankruptcy Rule 9075-1(a)(1) requires a party to contact chambers by email notification contemporaneously with filing a motion for an expedited hearing. Counsel may contact chambers using the following 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. Submission of documents by facsimile

Documents may not be submitted by facsimile unless previously approved by Judge Van Eck.

2. Remote Appearances

Except as otherwise noted below, counsel and pro se parties may not appear remotely at hearings and conferences unless: (1) they have requested and received permission to do so at least 24 hours in advance of the hearing or conference;¹ or (2) the Court has issued an order indicating that appearance by remote means is permitted.² Parties who have been granted permission to appear remotely must comply with Local Rule 9074-1 and the procedures described at the Court's website: <http://www.pamb.uscourts.gov/remote-appearance-guide>.

Remote appearances that **do not** require prior permission from Judge Van Eck's Courtroom Deputy are limited to the following circumstances:

- Reporting of settlements where such settlement occurred within 24 hours of the scheduled hearing. Note, however, that it is the Court's strong preference that, where possible, counsel utilize Form 9019-1 to report any settlements to the Court prior to the 24-hour deadline so that settled matters may be removed from the Court's calendar.
- Requests for continuance where such continuance request could not be finalized within 24 hours of the scheduled hearing. Note, however, that it is the Court's strong preference that, where possible, counsel utilize Form 9013-4 to request any continuance prior to the 24-hour deadline so that settled matters may be removed from the Court's calendar.

Remote appearances that **do** require prior permission from Judge Van Eck's Courtroom Deputy, but which are frequently granted, are limited to the following circumstances:

- Counsel whose offices are located outside of a 30-mile radius from the courthouse who are appearing in a matter that will not require the presentation of evidence.

Judge Van Eck will consider all other requests for remote appearances on a case-by-case basis. Any party not permitted to appear remotely will be expected to appear in person at the scheduled proceeding. Failure to appear may result in motions being dismissed for failure to prosecute them or objections being waived for failure to press the objection.

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 Wednesday. Chapter 13 confirmation and other related Chapter 13 matters are heard on Wednesdays, typically twice a month. Hearings are not

¹ Requests to appear remotely made within 24 hours of a hearing or conference will only be considered in emergency circumstances.

² Any requests to appear remotely related to concerns regarding the COVID-19 pandemic or other illness will be considered in light of the latest CDC guidance in effect at the time of the request.

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

If parties wish to cancel a hearing because they have agreed to continue the matter in advance of the hearing, they may file a completed version of Local Bankruptcy Form 9013-4 no later than 24 hours before the hearing. If an agreement to continue the matter is reached within 24 hours of the hearing, one of the parties must appear at the hearing either in person or remotely to make the continuance request. Judgment may be rendered against the moving party if Form 9013-4 has not been filed 24 hours prior to the hearing and no one appears at the hearing.

2. Settlements

If parties wish to cancel a hearing because they have reached a settlement in advance of the hearing, they may file a completed version of Local Bankruptcy Form 9019-1 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 remotely 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

Absent a compelling reason, testimony by remote means is highly disfavored. Requests to have a witness testify remotely must comply with Local Rule 9074-1(b).

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 (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. Timely filed exhibits which are attached to a pre-trial/hearing statement (if any) are therefore deemed exchanged upon the filing of same. 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 Judge Van Eck's 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, his law clerks, and 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. Any matter requiring the testimony of witnesses, except for motions to dismiss a Chapter 12 or 13 case and objections to proofs of claim, will not be heard on the Chapter 13 confirmation hearing date; rather, such proceedings 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. After the scheduling conference, Judge Van Eck will issue a scheduling order incorporating the deadlines discussed at the scheduling conference.

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.