PROCEDURES, POLICIES, PRACTICES, AND PREFERENCES

The following is an explanation of the procedures to be followed in most cases and proceedings assigned to the **Honorable Margaret Dee McGarity**, Judge of the United States Bankruptcy Court for the Eastern District of Wisconsin. These instructions are intended to supplement the Federal Rules of Bankruptcy Procedure and the Local Rules for the Eastern District of Wisconsin and not to supersede them. Those rules should be consulted first to determine the correct procedures to follow. The procedures outlined below are intended to be guidelines in routine matters only, and they may not necessarily be followed as circumstances warrant. Also, they may be changed from time-to-time, so they should be consulted as needed.

Contact Information.

Stephanie Larson, R.P., Judicial Assistant
Carolyn Belunas, Courtroom Deputy
Kris Trapp, Law Clerk
United States Courthouse
517 East Wisconsin Avenue, Suite 162
Milwaukee, WI 53202
(414) 297-3291 Ext. 3203

Correspondence With Court. Correspondence with the court that deals with substantive case matters is rarely appropriate and is vigorously discouraged. When in doubt, the preferred procedure for communicating with the judge is a pleading showing proof of service upon all proper parties. Routine filings and inquiries should be addressed to the Bankruptcy Clerk of Court, not the judge. Additional copies delivered to chambers are not necessary.

If papers are filed close to the time set for hearing, counsel or their staff should notify chambers of such filings by telephone.

Communication With Court Staff. Counsel are permitted to speak directly with the judicial assistant, courtroom deputy or law clerk, subject to the limitations that court staff members are not permitted to give legal advice or discuss the merits of pending matters. Rules relating to ex parte communications with a court apply to the court staff as well as to the judge. Individual cases may not be discussed with the judge's staff except to inform the court that a form of order is opposed, that an emergency hearing is needed, or that a calendared matter has been settled. Scheduling matters should be first taken up with the judge's judicial assistant, or in the alternative, with her courtroom deputy or law clerk.

Obtaining Calendar Dates. To calendar an emergency matter to be heard on shortened notice, or for matters requiring a hearing because notice and opportunity to request a hearing is not an option (see below), call chambers to obtain a date and time for hearing

prior to filing the motion. When notified of the date, time, and place of the hearing, counsel or the party requesting the hearing is responsible for notice to all interested parties.

We will have preliminary hearings by telephone on both section 707(a) and (b) motions. *Exception:* If the debtor is pro se, the initial hearing will be an in-person evidentiary hearing. You should still call us for the hearing date, so that you can put it in your notice.

Whether shortened notice is sufficient will be determined at the scheduled hearing.

If the matter can be disposed of by notice to interested parties, who then may request a hearing, the movant gives notice to interested parties, and the court will set a hearing only if a party against whom relief is sought objects within the applicable time limit, usually at least 14 days, plus three days for mailing, although this time may be shortened upon motion in extraordinary circumstances. Court rules for electronic notice apply. If the party against whom relief is sought objects, the objection must be in writing, filed with the court and served on other interested parties, and proper grounds for the objection should be stated. The court will then provide notice of the hearing to all parties identified as interested by the movant. If no objection is filed within the applicable time, the movant may submit an affidavit of no objection and proposed order. The signed order will be returned to the movant only, who is responsible for serving it on interested parties. Failure to submit the affidavit of no objection and proposed order within a reasonable time will probably result in the motion being dismissed for lack of prosecution. Cases with pending motions for relief from stay or lien avoidance may be closed without disposition after the discharge is issued and no further administration of the case is necessary.

Even though a matter might be disposed of in a summary manner under routine circumstances, the court always retains the right to set a hearing for any reason.

If there are a large number of proceedings to be filed at once, such as a group of preference actions or objections to claims in the same case, coordinate the scheduling of hearings with chambers before the pleadings are filed.

Rescheduling of Hearings. Trials will be continued very reluctantly, and only for the most compelling reasons. If hearings must be rescheduled due to a conflict with counsel's calendar, the party requesting the rescheduling must contact the court by telephone, together with opposing counsel or pro se party and the trustee, if necessary, as soon as the conflict is discovered, well in advance of the scheduled hearing.

Resolution of Matters Set for Hearing. A resolved matter that is set for hearing may be taken off the calendar by a conference call from the all parties involved as soon as practical. When informing the court that the matter is resolved, include the date and time of any scheduled hearings so they can be removed from the calendar. We do not

like to hunt for those dates. A written resolution (e.g., stipulation, agreed order, withdrawal of the objection or motion) must then be filed with the clerk. Failure to follow through may have undesirable consequences.

Telephone Conferences. The court conducts most preliminary hearings by telephone. Hearings that are “preliminary” are labeled as such in the hearing notice, and no evidence will be taken. However, there must be sufficient allegations made in the written response, request for hearing or by counsel at the preliminary hearing, or a credible assertion that additional investigation into the facts is necessary, to warrant scheduling a final evidentiary hearing. Without sufficient allegations, the court may grant or deny the motion at the preliminary hearing unless the court is persuaded that due process requires a final hearing.

Parties or counsel must provide the court with the telephone number where he or she can be reached at the time of the scheduled hearing, and the court will make every effort to place the call at the scheduled time of the hearing. Because of calendar matters, however, it is possible that a call will be delayed.

In general, telephone appearances are not permitted when a party or counsel will be examining a witness, is counsel for a client who is present in court, or is directed by the court to appear personally. Permission for an attorney to appear telephonically at an evidentiary hearing is granted on a case-by-case basis. If an attorney wishes to appear by telephone, that attorney may call the court for permission.

Very rarely are witnesses allowed to appear by telephone and only when they are testifying on matters that do not require the judge to evaluate their credibility and opposing counsel does not object. The court should be advised by conference call, including all parties, well in advance of the hearing that there is no objection to a witness appearing telephonically, and the court will determine if it will be allowed.

Facsimile Filing. Facsimile filings are not permitted by the court.

Chapter 13 Calendar. This court schedules all hearings involving cases for which Mary Grossman is the standing trustee on Tuesday afternoon from 1:00 - 2:30 p.m. All Milwaukee cases for which Thomas J. King is the standing trustee are scheduled on Tuesday afternoon from 2:30 - 4:00 p.m.

Weather Related Delays and Closing Procedures. The Chief Bankruptcy Judge and Bankruptcy Clerk of Court are responsible for determining when the courts and clerk's office are closed due to inclement weather. This procedure is on the Court’s main web site. This court may nevertheless elect to proceed, after consideration of the safety of all concerned. Parties should contact the clerk’s office or chambers if there is doubt whether hearings will proceed.

Available Equipment. Phone conferencing, easels, and conference/witness rooms are available to counsel. Counsel should contact the court's staff prior to the hearing to arrange for the use of a TV/VCR.

Obtaining Transcripts. If the hearing was held prior to November 1, 2008, the court used the services of Halma Jilek Reporting, Inc. At (414) 271-4466. The court reporting service should be contacted directly for copies of transcripts. If the hearing was held on or after November 2, 2008, the court used an Electronic Sound Recording system. The procedure for ordering copies of transcripts may be found on the court's website, www.wieb.uscourts.gov, under "Transcripts".

Exhibits. Exhibits should be filed as "proposed exhibits" prior to the trial. If exhibits are voluminous, counsel should contact the judge's staff to have them delivered directly to chambers. Exhibits should be numbered sequentially as jointly agreed by the parties. Alternatively, the parties can agree on numbers that do not overlap (for example, the plaintiff could take numbers below 500 and the defendant could take numbers from 500 on). Parties should reserve enough numbers for rebuttal exhibits.

After trial, and after the time to appeal has expired, the party submitting an original exhibit must withdraw the exhibit within 30 days or it may be destroyed. Call the Clerk's office, or chambers if directed to do so, to arrange for pick up.

Adversary Proceedings.

Issuance of Summons. After an adversary proceeding is commenced, the judge's judicial assistant will schedule a preliminary pretrial and issue an electronic summons with the date and time noted to the plaintiff via electronic noticing for service. If the plaintiff(s) is pro se, the summons will be mailed via USPS.

The preliminary pretrial is held by telephone and will be set approximately 60 days from the issuance of the summons to allow parties to comply with mandatory pretrial disclosures. A copy of the summons and complaint should be served upon each defendant (and upon his or her attorney of record, if the defendant is the debtor) within fourteen days from the date of the issuance of the summons in accordance with rules for service of process. An affidavit of service shall then be filed with the clerk as proof of service. Strict compliance with Fed. R. Bankr. P. 7004 is required.

If either the plaintiff(s) or the defendant(s) are pro se, the pro se party must contact the court at 414.297.3291, ext. 3203, three days before the date and time set for the preliminary pretrial, to advise the court of the telephone number they can be reached at for purposes of that hearing. *It is the responsibility of the plaintiff(s) or the attorney for the plaintiff(s) to provide this information to the defendant(s) if the defendant(s) is/are pro se.*

Motions for Default Judgment. In the event a defendant fails to answer the complaint in a timely manner, the plaintiff may be entitled to a default judgment. The plaintiff shall file a motion for default judgment with the court and serve the motion on the defendant with a 21 day opportunity to object and request a hearing. If no objection is received, an affidavit of no objection should be filed with the court and a proposed order for default judgment should be uploaded for signature.

Withdrawal of Representation of Debtor. If debtor's counsel will not be representing the debtor in an adversary proceeding, they must file either (1) a written motion to withdraw as counsel, along with notice to the debtor(s) and adversary(ies) providing for 14 days to object or (2) a stipulation signed by the debtor allowing the withdrawal from representation. Counsel will remain of record until the withdrawal is approved by the court. *See* Local Rule 9010.

Notice With Opportunity to Request Hearing (Negative Notice). The Bankruptcy Code and Rules allow for certain matters to be disposed of upon notice and opportunity for hearing. These are routine matters that are frequently uncontested. Official Forms for notice of a motion must be used, and the opposing party, and all creditors if such notice is required, must be clearly informed of the right to a hearing and how a hearing may be requested in order to satisfy a party's right to due process. A detailed explanation of the need for relief is especially important in these matters, and the relief will not be granted without a hearing if information is inadequate, even if there is no objection. The following is a list of motions that can typically be decided without a hearing after notice and no objection, but the court may set a hearing if it believes one is

needed, and it will readily do so if the moving papers indicate that the circumstances are unusual or notice is inadequate.

1. Relief from automatic stay or to continue or reimpose the stay, provided proper grounds are stated.
2. Lien avoidance under 11 U.S.C. § 522(f).
3. Dismissal of chapter 7, 12, and 13 cases brought by trustee. Motions to dismiss for failure to appear at a § 341 meeting under chapter 7 may be granted after only seven days.
4. Sale under 11 U.S.C. § 363, unless sale is to an insider, is of a particularly valuable asset (i.e, over $10,000), has not been adequately marketed, or does not allow for higher bids. Contemporaneous payment of a properly appointed auctioneer or realtor who handled the sale can be included in the notice of sale, provided the estate is not expected to be administratively insolvent, and such fees are subject to final review and recoupment.
5. Abandonment of property, unless it is particularly valuable.
6. Approval of compromise, unless it allows relinquishment of a substantial valuable right.
7. Appointment of a professional.
8. Withdrawal of attorney of record.
9. Stipulation extending of time to object to discharge or to dischargeability of debt, extending time to object to exemptions, extending time to accept or reject a lease or executory contract, and to redeem property. Motion requires a hearing.
10. Extension of time to file schedules in all chapters, or plans in chapter 13 cases. The trustee must be served. Usually only one extension of up to 14 days is allowed, and motions for additional extensions will require an evidentiary hearing.
11. Rule 2004 examinations. After service of the ex parte order allowing the examination, a motion for protective order will require a hearing.
12. Dismissal of case for failure to file required information or pay filing fee.
13. Certain motions to dismiss or convert to another chapter (see chart below).
14. Payment of administration expenses under $1,000, other than professional fees, by a chapter 7 trustee, after notice to the U.S. Trustee only.
15. Attorney's fee requests in excess of the "no look" amount in chapter 13.

If only a limited number of parties is interested in a particular motion, such as for lien avoidance, substitution of counsel, or relief from stay, the parties may also file stipulations in lieu of a motion. A stipulation is construed as a joint motion. A separate order approving the stipulation is required. A filing fee is not required for stipulations for relief from stay. If the debtor defaults on a prior adequate protection order, including a copy of the signed order along with the affidavit of default will minimize delay in entry of the default order.

Hearings Required. Certain matters require hearings in all cases, and the above procedures relating to obtaining a court date should be followed. This list is not exhaustive. Any matter not listed as one that can be decided upon notice and opportunity for hearing usually requires a hearing. Required hearings on motions or applications include:

1. All fee requests in chapter 11.
2. Approval of reaffirmation agreements for debtors not represented by counsel, unless the debt is a consumer debt secured by real estate, and evidence of insufficient income in relation to expenses.
3. Sanctions for wrongful conduct.

Objections to Claims. See Official Form 20B. Hearings will be set on all objections upon 30 days notice (see Rule 3007), usually by telephone, and may be continued if it is necessary to take evidence.

Voluntary Conversions and Dismissals. The following chart assumes that unless otherwise indicated, these motions or notices are made by the debtor or debtor's attorney to all interested parties in the case. Fed. R. Bankr. P. 1017(a). Notice will not be given by the bankruptcy court. *See* 11 U.S.C. §§ 706, 707, 1112, 1208, 1307.

Notice of the motion must advise interested parties of their right to request that the court set a hearing on the motion. No action will be taken on the motion unless 14 days have passed, plus three days for mailing. If no request for a hearing is made during that time, the moving party may file an affidavit of no objection and proposed order granting the action requested. LBR 9013. The court may also decide to set a hearing even if no request is made.

If a hearing is set, only the party requesting the hearing, debtor, debtor's counsel, and any trustee will be sent notice by the court at least 21 days before the hearing. Fed. R. Bankr. P. 2002(a)(4).

<u>Dismissals</u>

7, 11	Motion, opportunity for hearing, granting order discretionary with court. 11 U.S.C. §§ 707(a), 1112(b)(1).
12	Motion, case not previously converted, mandatory order dismissing. No notice necessary if case not previously converted. 11 U.S.C. § 1208(b).
13	Motion, case not previously converted, mandatory order dismissing. No notice necessary if case not previously converted. 11 U.S.C. § 1307(b).

<u>Conversions</u>

In all cases below, the debtor must qualify to be a debtor under the chapter to which conversion is sought.

7 to 11	Motion, case not previously converted, opportunity for hearing, granting order discretionary with court. 11 U.S.C. § 706(a), (b).
7 to 12	Motion, case not previously converted, opportunity for hearing, granting order discretionary with court. 11 U.S.C. § 706(c), (d).
7 to 13	Motion, case not previously converted, opportunity for hearing, granting order discretionary with court.[1] 11 U.S.C. § 706(c), (d).
11 to 7	Motion, debtor qualifies under § 1112(a), mandatory order granting unless debtor is a farmer or not a moneyed, business, or commercial corporation, or if so, unless debtor consents. 11 U.S.C. § 1112(c); Fed. R. Bankr. P 1017(f)(2).
11 to 12	Motion made before discharge, debtor requests, conversion is equitable, order granting discretionary with court. 11 U.S.C. § 1112(d).
11 to 13	Motion made before discharge, debtor requests, order granting discretionary with court. 11 U.S.C. § 1112(d).
12 to 7	Debtor converts, no notice or order. 11 U.S.C. § 1208(a); Fed. R. Bankr. P. 1017(f)(3).
12 to 11	Motion, if qualified, order granting discretionary with court. 11 U.S.C. § 1208(e).
12 to 13	Motion, if qualified, order granting discretionary with court. 11 U.S.C. § 1208(e).
13 to 7	Debtor converts, no notice or order. 11 U.S.C. § 1307(a); Fed. R. Bankr. P. 1017(f)(3).
13 to 11	Motion before confirmation, if qualified, order granting discretionary with court. 11 U.S.C. § 1307(d), (g).
13 to 12	Motion before confirmation, if qualified, order granting discretionary with court. 11 U.S.C. § 1307(d), (g).

Temporary Restraining Orders. Any request for a TRO or preliminary injunction requires an adversary proceeding. Accordingly, a complaint must be filed prior to the hearing. To obtain a date and time for a hearing on a request for a TRO, counsel should contact the court's staff. Ex parte TRO's without any notice to the opposing party are strongly discouraged.

Discovery Disputes. The judge will generally hold a telephonic conference to resolve a discovery dispute in lieu of formal motions to compel or quash discovery. Any request

[1] Although 11 U.S.C. § 706(a) states that "a debtor," as opposed to the court, may convert a case from chapter 7 to another chapter at any time, this court has interpreted *Marrama v. Citizens Bank of Mass.*, 127 S.Ct. 1105 (2007), to provide that the debtor must be eligible to convert to the chapter requested, and interested parties must have notice and opportunity to be heard before conversion takes place. No notice is necessary if the conversion is in response to a motion brought under 11 U.S.C. § 707(b). *See* Fed. R. Bankr. P. 1017(e).

for sanctions related to a discovery dispute, however, must be made by separate noticed motion, and hearing is required.

Orders After Hearings. Orders submitted after rulings on contested matters must be accompanied by either (a) a statement by counsel indicating approval as to the form of the order or (b) a statement by counsel that copies of the proposed order have been served on counsel for all objecting parties. The statements may be made by a cover letter signed by counsel. If there are written objections to the form of the order, the court will then schedule a conference call including all parties or will set a formal hearing. The court holds orders pursuant to Local Rule 9014.5 unless it is informed that all parties agree to the form of the order, the order is submitted pursuant to a stipulation, or the court is informed an objection is coming.

Signed orders. It is counsel's duty, upon receipt of a copy of the signed order, to ensure that all interested parties receive a copy.

"No Look" Fees. Debtors' attorney's fees in routine chapter 7 cases are presumed to be reasonable unless challenged. Attorneys fees in routine chapter 13 cases are presumed to be reasonable if they do not exceed the amount set from time-to-time and disclosed in the appendix to the local rules. Attorneys representing creditors in motions for relief from stay may charge up to $700 in fees plus costs unless challenged. While "no look" fees usually will not invite scrutiny by this court, this does not prevent an attorney from requesting greater fees (upon notice to creditors if the fees would be paid through a chapter 13 plan), nor does it preclude challenge if circumstances warrant. Requests for modest fee increases may be made on negative notice (see above). Appropriate fees are subject to change from time-to-time, and this court is open to receiving information concerning customary fees within the legal community for types of services typically provided in bankruptcy cases.

Gentle Reminders. Every document, including proposed orders, should have the drafter's name, address, telephone number and e-mail address in the lower left hand corner of the first page. With the number of papers we have to deal with, it is surprising how much cumulative time it saves finding out where something came from.

Copies of substantive cases cited should be attached to a courtesy copy of every brief (or pleading, if a case is cited), if requested by the court or if the complexity of the issue warrants.

If there is a default on a prior order, such as one with a doomsday provision, attach a copy of that prior order to the affidavit of default, if the order is not available electronically.

Include all necessary allegations in pleadings. For example, since a debtor has a right to dismiss a chapter 13 case if the case was not previously converted, say so. Or if the proper number of days after service has passed. Then we don't have to look it up.

Stipulations and orders have to be separate documents for docketing. If they continue to be combined after reminders are sent, the orders will not be signed.