

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**, United States Bankruptcy Judge for the Eastern District of Wisconsin. These instructions are intended to supplement the Federal Rules of Bankruptcy Procedure and the Local Rules for 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.

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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.

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. 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 15 days, although this time may be shortened upon motion in extraordinary circumstances. 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 default 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 default 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 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 telephone call from the moving party 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. If counsel finds it necessary to initiate the call to the court, counsel must so inform court staff prior to the hearing.

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. Documents may be filed by facsimile only in accordance with Local Rule 5005. No document may be faxed directly to the clerk or chambers without prior authorization from court staff, and all original documents must be filed promptly with the clerk's office. Facsimile transmissions not in compliance with the rules and these procedures will be disregarded (and a sharp rebuke should be expected).

Hearings at Remote Locations. The court conducts hearings in Oshkosh, usually on the first and third Wednesdays of each month. Proceedings requiring more than an hour may be heard on Wednesday afternoons or Fridays. All matters are heard at the Winnebago County Courthouse, 415 Jackson Street, Oshkosh, in the room assigned to this court on the day of the hearing. The location is available at the information desk of the courthouse. Similarly, if the number or length of hearings warrant, this court may hear matters in the Sheboygan County Courthouse. Telephone accessibility may or may not be available at remote locations, so personal appearance is required.

Chapter 13 Calendar. This court schedules all hearings involving cases for which David W. Asbach is the standing trustee on Tuesday afternoon from 1:30 - 3:00 p.m. All Milwaukee cases for which Thomas J. King is the standing trustee are scheduled on Tuesday afternoon from 3:00 - 4:30 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. Even if the court is not closed, and if weather conditions make travel hazardous, hearings at

a remote site may be cancelled. The court will make every effort to notify interested parties if this occurs, but 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 at the Milwaukee location. Counsel should contact the court's staff prior to the hearing to arrange for the use of a TV/VCR.

Obtaining Transcripts. The court reporting service should be contacted directly for copies of transcripts. The court uses Schindhelm-Peppey Reporting at (414) 271-0566 for Milwaukee hearings and Fay Francois Reporting at (920) 432-9023 for Oshkosh hearings. If a substitute reporting service was engaged for the hearing, the information can be obtained from the courtroom deputy.

Exhibits. Exhibits should be filed three days 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. After an adversary proceeding is commenced, the judge's judicial assistant will schedule a preliminary pretrial and return the summons with the date and time noted to the plaintiff for service. The preliminary pretrial is usually held by telephone and will be set at least 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 ten days from the date of the issuance of the summons in accordance with rules for service of process. The original summons and affidavit of service shall then be filed with the clerk, along with proof of service. Strict compliance with Fed. R. Bankr. P. 7004 is required.

Notice With Opportunity to Request Hearing. 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.

1. Relief from automatic stay.
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 five 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 7-10 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.

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 requires a hearing. Required hearings on motions or applications include:

1. All fee requests in chapter 11. Attorney's fee requests in excess of the presumed allowable amount in chapter 13 (see below).
2. Approval of reaffirmation agreements for debtors not represented by counsel, unless the debt is a consumer debt secured by real estate.
3. Sanctions for wrongful conduct.

Objections to Claims. The Official Form must be used. 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. This court has found the following chart useful in determining when a case is converted by notice by the debtor without court order, by motion, and when the right is absolute. The chart assumes that chapter 12 will be available, and all motions are made by the debtor.

Dismissals:	7, 11	Motion, opportunity for hearing, discretionary order
	12	Motion, not previously converted, mandatory order
	13	Motion, not previously converted, mandatory order
Conversions:	7 to 11	Motion, not previously converted, mandatory order
	7 to 12	Motion, not previously converted, mandatory order
	7 to 13	Motion, not previously converted, mandatory order
	11 to 7	Motion, mandatory order if qualified under ch.7
	11 to 12	Motion before disch., discretionary order if qualified under ch. 12, conv. is equitable
	11 to 13	Motion before disch., discretionary order if qualified under ch. 13
	12 to 7	Debtor converts
	12 to 11	Motion, discretionary order if qualified under ch. 11
	12 to 13	Motion, discretionary order if qualified under ch. 13
	13 to 7	Debtor converts
	13 to 11	Motion before confirmation, discretionary order
	13 to 12	Motion before confirmation, discretionary order

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 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 objections to the form of the order, chambers should be so informed immediately by telephone and followed up with a formal written objection. The court will then schedule a conference call including all parties or will set a formal hearing. The court generally signs orders five business days after filing unless it has been informed that all parties agree to the form of the order or an objection is coming.

Signed orders. The court will serve copies of orders only on the party submitting the proposed order. To avoid delays, counsel should ensure that a separate stamped envelope is provided for the order. It is counsel's duty, upon receipt of a copy of the signed order, to forward the copies to all interested parties.

Presumed Reasonable Fees. Debtors' attorney's fees in routine chapter 7 cases are presumed to be reasonable if they do not exceed \$1,000. Attorneys fees in routine chapter 13 cases are presumed to be reasonable if they do not exceed \$1,500, including a reasonable amount of time expended for motions to dismiss or for relief from stay. Attorneys representing creditors in motions for relief from stay may charge up to \$700 in fees plus costs unless challenged. While presumed reasonable 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. The presumptions concerning reasonable fees is subject to change from time to time, and this court is open to receiving information concerning customary fees within the legal community.

Gentle Reminders/Pet Peeves. The judge previously wrote an article entitled "We'll Get By With a Little Help From Our Friends," which is also on this web site. Everything in that article still applies.

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 cases cited should be attached to the chambers copy of every brief (or pleading, if a case is cited).

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. We might not even have access to the original order, and this practice saves at least a day.

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.

Doris' pet peeves: Summonses will be issued as promptly as possible, given other time sensitive matters that require our attention. If you haven't received the original within two weeks of filing, you may call. Otherwise, try to be patient. Also, we don't conform your copies of orders and mail them to whomever you are required to serve. And don't forget proof of service - if we cannot be sure who was served, delay and consternation follow.