

# Judge Ludwig's General Procedures\*

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\* For Eastern District cases only.

## **I. Communications with Chambers**

- *Ex parte* communication with Judge Ludwig is prohibited. Parties and counsel should communicate with chambers in writing.
- In limited circumstances, a party or its counsel may contact chambers concerning non-substantive, procedural, or scheduling matters, including:
  1. Obtaining, rescheduling, or canceling a hearing; see also “Rescheduling Hearings” below;
  2. Confirming the court’s receipt of an order; or
  3. Alerting the court to a filing that: (a) is an emergency filing, (b) affects a hearing that is in the near future, or (c) was required by the court to be made by a certain time to permit a timely ruling.
- When a party otherwise wishes to draw the court’s attention to something or obtain further clarity on a matter, the party should file correspondence on the docket.
- Chambers staff cannot provide legal advice.

## II. Hearings

### A. Scheduling hearings

- The court sets the date and time for most hearings. Hearings are usually set because a matter is contested, but, on occasion, the court will schedule a hearing to address the court's own questions or concerns.
- There are instances where a party must call chambers to obtain a hearing date, including:
  - Motions to continue the automatic stay
  - Motions for contempt or sanctions
  - Motions to dismiss a chapter 7 case for abuse
  - Motions to convert or dismiss a chapter 11 case
  - Motions to dismiss a chapter 12 case
  - Motions to dismiss a chapter 13 case that has previously been converted
  - Approval of disclosure statements in a chapter 11 case
  - Confirmation of chapter 12 plans
  - Motions for default judgment in adversary proceedings seeking to avoid a junior lien on real property
- For certain chapter 13 hearings, the court requires debtor's counsel or the trustee to schedule a hearing and issue a notice through CM-ECF. Please see "Chapter 13 Procedures" herein.

### B. Rescheduling hearings

- Preliminary hearings: To seek the rescheduling of a preliminary hearing (except for a hearing on a motion seeking relief from the automatic stay, see section IV), the court may be contacted via telephone once *all interested parties are on the line*.
- Evidentiary hearings: To seek the rescheduling of an evidentiary hearing, the parties must file a joint letter request on the docket, no later than *three business days* before the hearing, stating the reason for the request and whether any parties will be prejudiced by rescheduling the hearing. The court will not allow the rescheduling of evidentiary hearings absent extraordinary circumstances.

### **C. Hearing appearances**

- The court holds hearings both in-person and telephonically. The notice of hearing will indicate whether a hearing is in-person or telephonic.
  - **In-person hearings and testimony**
    - Hearings noticed as in-person require the attendance of counsel and may require the party's attendance if specifically listed in the notice.
    - All witness testimony must occur in-person and in open court, unless the court grants permission pursuant to Fed. R. Bankr. P. 9017.
  - **Telephonic appearances**
    - Telephonic hearings are conducted via a group telephone line. To appear by telephone, parties must call the court conference line at 1-888-808-6929, and enter access code 5457889## at least five minutes before the scheduled hearing time. This is an open line used for hearings on multiple matters. Parties should wait quietly, with telephones muted, until the party's case is called.
    - If a party wishes to appear by telephone, and the hearing notice does not specifically permit telephone appearances, the party should file a written request explaining the need for the telephonic appearance. The request must be filed sufficiently in advance of the hearing to allow the court to review and rule on it. The court will memorialize its ruling with an order or a docket notation.
    - Generally, parties appearing by telephone will not be able to introduce evidence or question witnesses. If the court permits a telephone appearance, you must call the court conference line at least five minutes before the scheduled hearing time.
    - Parties (including chapter 7 and 13 trustees) who wish to appear in an evidentiary hearing but not present evidence or conduct examination may appear by phone. A party desiring to appear in an evidentiary hearing or trial should call chambers by 4:00 p.m. the day before the evidentiary hearing and notify chambers staff that they will be appearing by telephone. No written request is required; a telephone call is sufficient.

### III. Chapter 13 Procedures

#### A. Chapter 13 calendar

- The court holds chapter 13 hearings on Tuesdays. Cases assigned to Chapter 13 Trustee Scott Lieske are heard from 1:00 p.m. to 2:30 p.m.
- If a matter set for hearing has been resolved, parties should endeavor to contact chambers by 4:00 p.m. on the day before the hearing to allow the court time to remove the hearing if appropriate.

#### B. Chapter 13 dismissal motions

- Counsel for the debtor is responsible for scheduling a hearing when filing an objection to a Chapter 13 Trustee's motion to dismiss. This procedure only applies to objections to the Chapter 13 Trustee's motions to dismiss. If a creditor files a motion to dismiss, the court will set a hearing on the motion upon the debtor's timely objection.
- The procedure for filing an objection to a Chapter 13 Trustee's motion to dismiss, including how to schedule the corresponding hearing, is as follows:

1. Use CM/ECF to determine the date and time of the hearing:

- a. In CM/ECF, go to Reports and look under Chambers Reports / Functions. Click on CHAP Chamber Presets.



- b. Choose Judge Ludwig from the drop down menu.
- c. The date and time present on the table is the date to use for scheduling the hearing. Note that there may be different times for each Trustee – choose 1:00 p.m. for Scott Lieske's cases.

2. Once you find the appropriate hearing date and time, insert it into your Notice of Hearing. Please use the suggested language below in your Notice of Hearing, and include a certificate of service showing service on the debtor(s):

PLEASE TAKE NOTICE that a telephone hearing will be held before the Honorable Brett H. Ludwig, United States Bankruptcy Judge, on [date] at [time], to consider [the trustee's motion to dismiss/the trustee's affidavit/certification of default]. To appear by telephone, you must call the court conference line at 1-888-808-6929, and enter access code 5457889## before the scheduled hearing time. The court may already be in session, so please wait quietly on the telephone for your case to be called.

3. Once the notice and objection are ready to file, docket the notice and objection using the following instructions:

- a. In CM/ECF, go to Answer/Response, Reference an Existing Motion/Application and enter the case number.
- b. Make the following selections (DO NOT SKIP THIS STEP!):

Are you including a Notice? Yes  No

Are you including a Certificate of Service? Yes  No

Next Clear

- c. Choose Objection in the selection menu
- d. Select the Party and Filing Attorney
- e. Attach the PDF of the Objection and add Attachments to Document

Attachments to Document:  No  Yes

- f. Attach the PDF(s) of the Notice of Hearing and the Certificate of Service.

1) Select the PDF document that contains the attachment.

Filename

Browse... Notice of Hearing on Motion to Dismiss-Conference Line Procedure (2).pdf

2) Fill in the fields below.

Category and/or Description

Notice of Hearing

- g. Check the “Refer to Existing Event(s)” box, and use the drop down menu under Set/Reschedule Hearing Information to select your hearing date and time. (If needed, the Chamber Presets link opens the available preset dates also found under Reports).

Refer to existing event(s)?

Set/Reschedule Hearing Information

In order to enter a hearing date/time/location, you must obtain prior approval from the presiding judge. Contact the Chambers of Judge Kelley.

Please select from the following hearings Chamber Presets

Please select from the following hearings

11/03/2015 - 09:45 AM - Objections to Ch. 13 Motions to Dismiss-Tr. Rebecca Garcia [Slots: 16]

11/03/2015 - 11:00 AM - Objections to Ch. 13 Motions to Dismiss-Tr. Mary Grossman [Slots: 12]

Objection due date: [calendar icon]

- h. Link to the event filed by the Trustee (Motion to Dismiss)

- Troubleshooting: *If dates and times appear on the chart, but not for Judge Ludwig, Trustee or the specific matter type needed.* First, try clearing your cache. If that doesn't work, the date may have filled up. Please contact chambers to get a new date. If you are filing after hours, you may leave a message. On the next business day, the dates will be updated. A notice of hearing may be filed separately from the objection.

### C. Policies for doomsday orders in chapter 13 cases

- Doomsday orders allow the Trustee to file an affidavit or certification of default to obtain dismissal of a case in the event the debtor defaults on a requirement specified in the order. Judge Ludwig *may* hold the order dismissing the case for a brief period for objections. Procedures for common defaults are set forth below:
  - **Failure to file a notice of conversion by a deadline.** Judge Ludwig will not wait for the Trustee’s affidavit of default or proposed order before signing the dismissal order.

*Example:* An order requires the debtor to convert to chapter 7 by April 12. Judge Ludwig will review the docket on April 13, and, if no notice of conversion has been filed, a dismissal order will be signed immediately.
  - **Failure to file a modified plan by a deadline.** Judge Ludwig will wait for the Trustee’s affidavit of default, but will not wait any set period of time before signing the dismissal order.

*Example:* An order requires the debtor to file a modified feasible plan by April 1. The Trustee files an affidavit of default on April 14. Judge Ludwig reviews the docket on April 14, and, if the required plan has not been filed, a dismissal order may be signed immediately.
  - **Failure to make timely plan payments.** Judge Ludwig will hold the order dismissing the case for 7 calendar days after an affidavit of default is filed.

*Example:* The Trustee files an affidavit of default on April 10, stating that the debtor failed to make the March plan payment. Judge Ludwig will hold the dismissal order until April 17. If no objection to the affidavit of default is filed, the dismissal order will be signed on April 18.
  - **Failure to provide tax returns or pay one-half of tax refunds** (or file a modified plan to account for tax refunds). Judge Ludwig will hold the order dismissing the case for 7 calendar days after an affidavit of default is filed.

*Example:* The Trustee files an affidavit of default on March 10, stating that the debtor failed to provide tax returns. Judge Ludwig will hold the order of dismissal until March 17. If no objection to the affidavit of default is filed, the order of dismissal will be signed on March 18.
- Judge Ludwig will not sign proposed orders that state that the case will be dismissed “without further notice or hearing” on the filing of an affidavit of default.
- Objecting to an affidavit of default should be rare; a party should seek relief from a doomsday order before an affidavit of default is filed.
- The court will consider sustaining an objection to an affidavit of default only if the movant can prove (1) there was no default or (2) extraordinary circumstances warrant an extension of the defaulted deadline.
- Debtor’s counsel should be prepared to present evidence at the hearing on the objection. Objections to an affidavit of default must be supported by an affidavit from the debtor; otherwise, the debtor must appear and testify at the scheduled hearing.

## **IV. Procedures for Common Filings**

### **A. Hearings on motions for relief from the automatic stay**

- Hearings on motions for relief from the automatic stay must be heard within 30 days after the motion is filed, or relief is provided to the movant. *See* 11 U.S.C. § 362(e)(1).
- If parties seek to reschedule the hearing to another date within 30 days after the motion was filed, they may call chambers to inquire about rescheduling only if all interested parties are on the line.
- If parties seek to reschedule the hearing to a date beyond 30 days after the motion was filed, they must file a joint letter request explaining the circumstances for the adjournment.
  - The court will not grant the parties' request unless it is satisfied that "there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of [ ] a final hearing [on the matter]." 11 U.S.C. § 362(e)(1).
  - The parties should file the joint letter request and then contact chambers via telephone to alert the court to the filing. A joint letter request should be filed sufficiently in advance of the hearing to allow the court to review and rule on the request.
- When practicable, proposed orders granting relief from the automatic stay should conform to the sample orders on the court's website.

### **B. Motions to continue or impose the stay under § 362(c)(3) or (4)**

- Before filing the motion, the moving party should contact chambers to request a hearing date.
- The motion should state the bases for continuing or imposing the stay, and be accompanied by an affidavit containing specific facts demonstrating that the case was filed in good faith, including facts sufficient to rebut any applicable statutory presumptions.
- The movant should file the affidavit(s) at the time of filing the motion. Without this information, the court may have to conduct a hearing on the motion, even in the absence of objection.
- The movant should also file a copy of the proposed order at the time of filing the motion. If there are no objections to the motion or proposed order, the movant can then use the Proposed Order Event to promptly upload the proposed order for the court's signature. If the court determines the debtor has met the appropriate burden, the court may enter the proposed order. The court may nevertheless hold a hearing if the time for objections has not passed, there is an objection, or the court is not satisfied that the debtor has met the appropriate burden of proof.



**C. Motions requesting expedited relief**

- All requests to shorten notice should be made by separate motion, filed and served before or at the same time as the underlying motion.
- Parties seeking expedited adjudication should contact chambers via telephone to advise the court of the filing. The court will work to consider the motion promptly.
- The court may (1) grant the request to shorten the notice period and provide a hearing date to be used to notice the underlying motion; (2) rule on both the request to shorten notice and the underlying motion at a hearing that the court will set; or (3) deny the party's request to shorten notice.

**D. Objections to claims**

- Parties do not need to obtain a hearing date before filing an objection to a claim. The court will set a hearing on a claim objection if (1) a response is filed or (2) following the response deadline and filing of a proposed order, the court feels that more evidence is needed to determine whether there is a legal basis to sustain the objection.
- Unless the objection is based on facts of which the court may take judicial notice (such as a late, unsigned, or incomplete claim submission), the objection must be supported by admissible evidence sufficient to overcome the evidentiary effect of a proof of claim executed and filed in accordance with Fed. R. Bankr. P. 3001, such as a declaration (*see* 28 U.S.C. § 1746) or affidavit signed by the debtor or others with knowledge supporting the objection.

**E. Motions for default judgment**

- With limited exceptions, the court requires plaintiffs in adversary proceedings to submit evidence at a prove-up hearing (either live testimony or an affidavit from the plaintiff(s)) to substantiate the allegations in the complaint. This includes adversary proceedings seeking to avoid a junior mortgage/lien on real property owned by the debtor.

**F. Issuance and service of summons in adversary proceedings**

- Upon filing an adversary complaint, the court will electronically issue a Summons.
- The official form Certificate of Service is attached to the Summons and mirrors the service requirements of Fed. R. Bankr. P. 7004. Parties should use the official form Certificate of Service or use the language therein to describe the method of service. A fillable version of the official form is available on the court's website.
- Fed. R. Bankr. P. 7004 governs how service of a summons and complaint must be effected.

- If more than one defendant is listed on the Certificate of Service as being served, specify on the Certificate of Service how each defendant was served.

*Example:*

John Smith	Liam Dowd, President
1234 S. Main Street	One World Bank
Milwaukee, WI 53211	444 E. 99th Street
(First Class Mail)	Milwaukee, WI 53202
	(Certified Mail)

- The Summons must be served within 7 days of being issued or it is deemed stale. *See* Fed. R. Bankr. P. 7004(e). If service is not accomplished within 7 days, contact chambers in writing to request an amended summons.

**G. Service of motions in contested matters**

- For all contested matters initiated by motion governed by Fed. R. Bankr. P. 9014, the motion must be served in compliance with Fed. R. Bankr. P. 7004.
- For objections to claims, service on the claimant at the notice address listed on the claim is sufficient.

## **V. Proposed Orders**

### **A. Orders following hearings**

- The court generally will hold orders submitted after a hearing for seven days to allow other parties time to comment on or object to the form of the order, per Local Rule 9014.5.
- The court may not hold a proposed order arising from a hearing if the court concludes that the proposed order is appropriate based on the record.
- The court may not hold a proposed order arising from a hearing if the parties file a written representation that all interested parties agree on the form of the order.

### **B. Orders resolving motions and objections**

- All proposed orders on motions or objections must state that the motion or objection is granted or denied (in whole or in part) or withdrawn, as applicable.
- The court will not generally hold orders arising from uncontested motions, including motions to continue the automatic stay and motions for relief from the automatic stay.

### **C. Orders approving stipulations**

- Proposed orders approving stipulations should have the stipulation attached as an exhibit.
- Orders resolving adversaries should be entitled either (a) Order for Judgment, or (b) Order Dismissing Adversary.

## **VI. Pretrial Procedures, Evidentiary Hearings, and Trials**

### **A. Preliminary pretrial conferences**

- When the court issues a summons it generally sets a preliminary pretrial conference. At the preliminary pretrial conference, parties should be prepared to discuss: (1) the factual basis and legal theory behind the action(s)/defense(s) presented in their filings, including the contested issues and whether further briefing will be necessary; (2) whether summary judgment may be sought; (3) a timeline for discovery, if necessary; (4) any settlement discussions, if applicable; and (5) dates for briefing and discovery deadlines, a final pretrial conference, and an evidentiary hearing or trial.

### **B. Final pretrial conferences**

- Generally, the court will hold a final pretrial conference one or two weeks in advance of an evidentiary hearing or trial. The purpose of the final pretrial conference is to determine what remains at issue and what the parties expect to present at the evidentiary hearing or trial.

### **C. Pretrial/prehearing reports**

- For most trials and many evidentiary hearings, the court will issue a separate scheduling order setting forth the requirements for filing pretrial reports and the deadline by which the parties must do so.

### **D. Exhibits and other evidence**

- Unless ordered otherwise, at least three business days before the trial or hearing, the parties should file with the court and serve on all participating parties numbered copies of their exhibits. The plaintiff/moving party may use numbers 1-99, the defendant/objecting party 100-199, and the trustee 200-299.
- The court will not review any exhibits, unless offered by the parties or stipulated by the parties as admissible.
- Unless the parties stipulate to the admission of an appraisal, appraisers will be expected to testify when value is in dispute.
- The court will not allow telephonic testimony or questioning without an advanced showing of good cause.