

## Judicial Procedures Survey for the Honorable Stephen L. Johnson

In 2014, the Bench-Bar Liaison Committee generated a survey of the Northern District Bankruptcy Judges. The questions focused on various practice procedures utilized by the judges and the questions and responses were printed out in a black notebook. The following is an effort to update and the responses from 2014. We have surveyed the judges in response to a series of questions divided up into different topics. Each judge's responses to the survey are posted online in the section specific to that judge. In the event of any conflict between the judge's responses to the survey and his or her posted procedures and practice, the posted procedures and practice, as well as the Local Rules will control.

### I. CALENDAR HEARINGS

Questions	Response
1. Does the judge allow hearings to be set by parties and attorneys using a "self-calendaring" system (in which a range of dates are available for selection without having a date personally from the courtroom deputy)?	Yes. Calendars are set approximately six to twelve months in advance and are made available for self-calendaring through ECF. There is no need to contact the courtroom deputy for matters being noticed on a regular time schedule (e.g., 21 or 28 day calendars, see BLR 9014-1). The range of dates is available on the court's website.
2. May parties and attorney contact the judge's staff to request the Court to specially set a date and time for a longer hearing?	Yes. The courtroom deputy can advise parties if the judge is available at a particular time.

## II. EMERGENCY MATTERS AND APPLICATIONS FOR ORDERS SHORTENING TIME FOR HEARING

Questions	Response
1. Does the judge allow hearings on an emergency basis (less than 48 hours' notice)?	Yes.
2. If so, who is the point of contact for arranging for consideration of emergency motions?	The courtroom deputy, Anna Lee (408-278-7517)
3. Does the judge calendar a hearing on an emergency motion prior to receipt and review of moving papers?	<p>No.</p> <p>If a party is requesting an order shortening time, they must first file the moving papers, but without noticing or serving them, and then an application to shorten time that complies with BLR 9006-1. The court only shortens time if there is cause to do so and the moving party has made a diligent attempt to contact the adverse parties of the request for an order shortening time.</p> <p>Notice of a hearing on shortened time should only be given after the court has signed an order shortening time.</p>
4. For emergency motions or hearings on shortened time, does the judge require delivery of the judge's copy of the moving or responding papers to chambers?	No. E-filing is satisfactory.
5. Does the judge act on emergency motions without requiring notice to any party whatsoever?	This would be a rare case and good cause must be shown, as ex parte relief is limited.
6. Does the judge require declarants to be present in court on emergency motions?	No, but it is often helpful if the moving papers have omitted factual matters of significance to the request.

<p>7. Does the judge require some notice to another party before granting an application for order shortening time for hearing?</p>	<p>Yes. See BLR 9006-1. The court does not grant shortening time unless the moving party has complied carefully with all aspects of BLR 9006-1.</p>
<p>8. Does the judge grant orders shortening time for hearings (other than emergency matters) upon a showing of good cause?</p>	<p>Yes, subject to BLR 9006-1.</p>
<p>9. Does the judge routinely grant orders shortening time for hearings on the following matters?</p> <p>(a) Relief from stay motion in residential unlawful detainer cases</p> <p>(b) Chapter 11 first day motions, including cash collateral hearings</p> <p>(c) Sales of property</p> <p>(d) Applications for temporary restraining orders</p> <p>(e) Other matters (please specify)</p>	<p>(a) No, as the calendars are held nearly every week and the local rules already permit 14 days' notice.</p> <p>(b) Yes, subject to BLR 9006-1.</p> <p>(c) Yes, subject to BLR 9006-1.</p> <p>(d) Yes, subject to BLR 9006-1 and Bankruptcy Rule 7065.</p> <p>(e) Depends on the relief requested, but always subject to BLR 9006-1.</p>

### III. HEARINGS & TELEPHONIC APPEARANCES

Questions	Response
1. What matters, if any, will the judge <b>not</b> allow telephonic appearances?  (a) Disclosure Statement & Confirmation Hearings  (b) Evidentiary Hearings  (c) Other matters (please specify)	(a) Allows telephonic appearances  (b) No telephonic appearances by counsel or witnesses.  (c) --
2. Does the judge consider priority requests from counsel at the time of calendar call?	Yes.
3. Does the judge hear stipulations and uncontested matters and requests for continuances before hearing opposed matters?	On relief from stay calendars, yes.

### IV. PROCESSING ORDERS

Questions	Response
1. Does the court require an order to be approved as to form prior to being submitted?	In a matter that was contested, yes. See BLR 9021-1.
2. If not, does the court lodge an order for 7 days under LBR 9021-1 (c)?	Yes.

<p>3. What procedure does the judge prefer if there is an objection to the form of order that cannot be resolved by the parties?</p> <p>(a) File a formal objection</p> <p>(b) letter to the judge setting forth the objection</p> <p>(c) Contact the judge's clerk to set up a conference call</p> <p>(d) Either procedure (please specify)</p>	<p>File a formal objection and let the courtroom deputy know by telephone.</p>
<p>4. If a large number of parties are entitled to receive notice of entry of an order signed by the judge, what procedure does the judge use to accomplish service of notice of entry of that order?</p>	<p>The only parties who are entitled to receive notice of an order via the Court Service List are those who appeared or objected <i>and</i> are not ECF participants. See BLR 9022-1. Otherwise, it is the moving party's responsibility to serve notice of entry of order.</p>
<p>5. What are the judge's procedures when parties cannot agree on the form of the order?</p>	<p>Someone should lodge a form of order and someone else should object. The court will consider the papers filed. If there's a dispute that the court cannot resolve, it will probably set a telephonic hearing.</p>
<p>6. How long should counsel or parties wait before contacting the staff regarding the status of a lodged order?</p>	<p>7 days after uploading order.</p>
<p>7. Does the judge permit attorneys and parties to communicate with the law clerk regarding rejected proposed orders?</p>	<p>No.</p>

**V. JUDGE'S COPIES OF FILED DOCUMENTS**

<b>Questions</b>	<b>Response</b>
1. Does the court require courtesy copies of pleadings filed in the case?	Relief from stay – no. Other motions – yes.
2. Are there exceptions to this rule, e.g. relief from stay motions?	See above.

**VI. COMMUNICATIONS WITH JUDGE'S STAFF**

<b>Questions</b>	<b>Response</b>
1. Does the judge allow attorneys and pro per parties to communicate with the judge's courtroom deputy regarding: (check where appropriate)  (a) Scheduling matters  (b) Status of orders  (c) Other matters (please describe)	(a) Yes.  (b) Yes.  (c) Yes. The courtroom deputy is the point of contact.
2. Does the judge permit attorneys and pro per parties to communicate with the judge's law clerk regarding: (check where appropriate)  (a) Scheduling matters  (b) Status of orders  (c) Other matters (please describe)	Communications with the judge's law clerk are <u>barred</u> as ex parte communications.

## VII. STATUS CONFERENCES

Questions	Response
<b>Chapter 11 Cases:</b>	
1. Are status conferences held in Chapter 11 cases?	Yes.
2. Are status conference statements required?	Yes.
3. Are the required contents of the statement set forth in the judge's order setting the status conference?	Yes.
4. Is the debtor or debtor's responsible individual required to appear at the status conference?	No.
5. Will the judge set plan filing deadlines at the status conference?	Generally yes.
6. Can the status conference be continued? If so, can what is the preferred method for doing so?	Yes. To continue the initial status conference, the moving party needs to file an application to continue the hearing at least two weeks prior to the status conference and upload an order. If the court grants the application, the moving party will be required to serve notice on all creditors and interested parties.
7. Does the judge impose sanctions for failure to file the status conference report?	Generally no. But not filing a status conference statement suggests the case is not being properly administered and litigated and will be a factor to consider in a motion to dismiss or convert.
8. Is a scheduling order prepared after a status conference when the judge sets a plan and disclosure statement deadline and if so, who prepares the order?	Yes, the court prepares the order.
<b>Adversary Proceedings:</b>	
9. Are status conference statements required? If so, when are they due?	Yes. They are due 7 days prior to the status conference.

10.	Are the required contents of the statement set forth in the judge's order setting the status conference?	The court issues a separate order setting forth the required contents of the statement shortly after the commencement of the adversary proceeding.
11.	Does the judge impose sanctions for failure to file the status conference statement?	No. But it will be a factor to consider if the case is subject to dismissal for other reasons, such as failure to appear.
12.	Is the represented party required to appear at the status conference?	No.
13.	Will the judge set a trial date at the status conference?	Generally yes.
14.	Does the judge require the parties to file a discovery plan?	No.
15.	Can the status conference be continued? If so, what is the preferred method for doing so, and what, if any, deadlines apply?	Yes, by filing an application or stipulation to continue the hearing and upload an order. If the request is made by application, it must be served on the opposing parties.

#### VIII. RELIEF FROM STAY MOTIONS

Questions		Response
1.	Are appearances required if there is a statement of non-opposition from the debtor and trustee?	Yes.
2.	Will the court hear testimony at a final hearing?	Yes.
3.	Does the judge grant ex parte relief from stay in unlawful detainer cases?	No.
4.	Does the judge have special procedures for handling residential relief from stay motions? What are they?	No.
5.	Does the judge permit shortened notice on motions for relief from stay where there is proof of any of the following:	The court will grant an order shortening time that complies with BLR 9006-1 and demonstrates cause, which includes explaining why the 14-day regular notice is insufficient. No special procedures are in place for any of the identified matters.



<ul style="list-style-type: none"> <li>(a) A prior unlawful detainer judgment</li> <li>(b) A prior adequate protection order</li> <li>(c) Multiple bankruptcy filings</li> <li>(d) Other conduct constituting bad faith</li> <li>(e) A Chapter 13 confirmation hearing is already scheduled</li> <li>(f) None of the above</li> <li>(g) Other (please specify)</li> </ul>	
<p>6. Does the judge hear relief from stay motions on shortened notice in <b>non-residential</b> unlawful detainer cases?</p>	<p>No.</p>
<p>7. Does the judge require declarants to be present in court for final (evidentiary) hearing on motions from relief from the automatic stay?</p>	<p>Yes. Final (evidentiary) hearings generally are specially set by the court so counsel will have ample notice of the hearing date.</p>
<p>8. Upon an appropriate evidentiary showing, will the judge award prospective relief from stay effective for 180 days in future bankruptcy cases filed by the debtor?</p>	<p>Yes, when appropriate on the facts and consistent with the law.</p>
<p>9. Does the judge grant requests for retroactive annulment of the automatic stay?</p>	<p>Yes, when appropriate on the facts and consistent with the law.</p>

## IX. MOTION'S PRACTICE

Questions	Response
1. When does the judge require declarants to be present in court on emergency motions or hearings on shortened time?	Generally, it is good practice to have declarants in court for emergency hearings as the court often has questions that counsel cannot answer.
2. When does the judge require declarants to be present in court on regularly scheduled motions?	Not required.
3. Does the judge require written evidentiary objections to be made in a separate document?	No.
4. Can a party continue a motion on its own?	Only if no responsive pleading has been filed.
5. Can a hearing on a motion be continued by stipulation?	Yes. If the parties intend to continue a matter, it is helpful to the court if they advise the courtroom deputy as soon as possible. There are two ways to accomplish this: (1) Agreed continuances can be announced at the time of the original hearing on the record, or (2) Continuances can be accomplished by filing a stipulation and uploading an order. Consult the court's website for future hearing dates.
6. Does the judge allow true ex parte relief (without notice to the opposing party) when issuing temporary restraining orders?	Yes, if in compliance with FRBP 7065 and good cause shown.
7. If not, what notice does the judge require?	N/A

## X. PROOF OF SERVICE REQUIREMENTS

Questions	Response
1. Does the judge deny motions for failure of the moving party to prepare and timely file proof of service which complies with	Yes, the court may deny or continue the motion, to be decided on a case-by-case basis.

	all of the requirements of Local Bankruptcy Rule 9013-3?	
2.	Does the judge continue motions to allow movant to provide proof of service?	See above.
3.	Does the judge deny motions for failure to identify on the proof of service the capacity in which parties have been served as required by the Local Bankruptcy Rule 9013-3(b)	No.

## XI. CONTINUANCES

	Questions	Response
1.	Does the judge allow for continuances of motions other than by noticed motion or written stipulation?	Yes. The court may grant request to continue at the hearing.
2.	Does the judge permit stipulated or unopposed oral requests for continuances?	Yes, but the party should let the courtroom deputy know as soon as possible prior to the hearing.
3.	Does the judge permit continuances of trial dates by stipulation of the parties?	No.
4.	Does the judge permit continuances of disclosure statement hearings or confirmation hearings by stipulation of the parties?	Yes, but the parties must inform the court at least 3 days prior to the hearing pursuant to BLR 3017-1(b) and BLR 3020-1(c).

## XII. DISCOVERY DISPUTES

	Questions	Response
1.	Does the judge require a noticed motion in order to hear a discovery dispute?	No.
2.	Does the judge resolve discovery disputes by conference calls?	Yes.

3.	Does the judge hear discovery dispute motions without full compliance with the requirements of Civil Local Rule 37 (a)(1)?	Yes, for an initial dispute. If matters cannot be resolved by the court's initial intervention (see #2), the court may require a full motion and compliance with appropriate rules, including FRBP 9037.
4.	Does the judge mandate strict compliance with the Civil Local Rule 37 (a)(1) requiring that the parties to a discovery dispute to meet and confer?	Yes.
5.	Does the general discovery cutoff date include disclosure of expert witnesses?	Ordinarily, the court will stagger the two dates to allow regular discovery to close before expert discovery.
6.	What is the deadline for holding a hearing on a discovery dispute motion?	Before discovery cutoff, as set forth in the trial scheduling order.

### XIII. DISCOVERY CUT OFF DATE

	Questions	Response
1.	Do you typically set the discovery cut-off date on first Status Conference?	Generally no, unless the parties are ready for trial setting.
2.	Do you readily approve a stipulation to extend the discovery cut-off date if it do not interfere with the Trial Setting Conference?	Yes.
3.	Do you strictly enforce a discovery cut-off date absent unreasonable conduct by the opposing party?	It is the litigants' responsibility to bring any discovery violations before the court and the court will make a determination on a case-by-case basis.

### XIV. CONVERSION AND RULE 2004 MOTIONS

	Questions	Response
1.	What is the minimum amount of notice the judge requires for a FRBP 2004 Examination?	2-3 days; enough time for adverse party to interpose an objection.

2.	Does the judge sign orders on initial motions to convert the case from Chapter 7 to Chapter 11, 12 or 13 or from Chapter 11 to Chapter 7 without a hearing?	Yes, if proper notice has been given and in compliance with applicable FRBP and BLR.
3.	Does the judge rule on motions under FRBP 2004 without a hearing?	Yes.
4.	What procedures does the judge require in order for a party to object to a 2004 exam or the documents demanded as part of the 2004 exam?	File an objection and advise the courtroom deputy that you have done so.
5.	Does the judge require meet and confer efforts before a motion for protective order has been filed regarding a FRBP 2004 examination?	Yes, this is always a good idea.

#### XV. CONSUMER CASES

Questions		Response
1.	Does the judge require hearings on reaffirmation agreements if the party is represented by counsel and counsel has certified that the party has the ability to meet the obligations of the agreement, despite the presumption of undue hardship?	Decided on a case-by-case basis; court must evaluate whether the presumption is rebutted by an explanation that is satisfactory.
2.	Will the judge confirm a plan prior to a loan modification being finalized, provided creditor is receiving adequate protection payments?	Yes, subject to the conditions set forth in the District's Guidelines Regarding Residential Loan Modifications on Relief from Stay Motions and in Chapter 11 and Chapter 13 Plans.
3.	At relief from stay hearings does the judge:  (a) Require waiver of the Rule 4001 stay?	(a) Yes, ordinarily when debtor does not appear to contest relief. Otherwise, no.  (b) No part of my procedures, but the parties may so stipulate.

(b) Allow a three strikes provision that allow automatic relief from stay if a debtor is late on three payments?	
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**XVI. CHAPTER 11 PROCEDURES**

Questions	Response
1. Does the judge prefer that a party use the combined model plan and disclosure statement for individual Chapter 11 cases?	Yes.
2. Does the judge prefer that a party use the combined model plan and disclosure statement for corporate Chapter 11 cases?	Generally no, as the model plan is not set up for this purpose.
3. Does the judge allow less than 35 days' notice of the hearing on a disclosure statement?	Ordinarily, no.
4. Does the judge use a fast track procedure involving preliminary review and conditional approval of disclosure statements without a hearing?	No.
5. Does the judge allow the plan and disclosure statement be combined into a single document in Chapter 11 cases that are not small business Chapter 11 cases?	Depends on the circumstances, such as the complexity of the case.
6. Does the judge require the plan proponent to submit admissible evidence for the plan confirmation hearing to prove the plan is confirmable?	Yes
7. If so, can the plan proponent do this by offer of proof or by pre-hearing submission of a declaration?	Yes.
8. Does the judge prefer the bar date for administrative claims be in the plan, in the	No preference.

order confirming the plan or does the court set such date by separate order?	
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**XVII. DEFAULT JUDGMENT**

Questions	Response
1. <b>When</b> the judge require a hearing on a motion for default judgment?	It can be submitted on the papers. If the court has concerns, it will set a hearing.
2. If so, does the judge require 28 days' notice of such a hearing?	N/A

**XVIII. TRIAL PROCEDURES**

Questions	Response
1. Does the judge have mandatory trial procedures in addition to requirements under the Local Bankruptcy Rules?	The court has a trial scheduling order that is used in all adversary proceedings.
2. If so, how are these procedures obtained?	The trial scheduling order is issued when the court sets a trial date.
3. When are trial dates set by the judge?	Generally, at the first or second status conference.
4. Does the judge hold pre-trial conferences and if so when are those held relative to the trial date?	Approximately 2 weeks prior to the trial date, depending on calendar availability.
5. Does the judge require direct testimony from witnesses in party's control to be presented by declaration?	Depends on the case. The decision is made at trial setting or pretrial conference.
6. If not required, under what circumstances does the judge permit direct testimony from witnesses in a party's control to be presented by declaration upon the request of the parties?	The court discusses this at the pre-trial conference.

7.	Does the judge have published procedures regarding the exchange of declarations in advance of trial?	In the court's trial scheduling order.
8.	Does the judge require parties to present written evidentiary objections to trial declarations and exhibits of the opposing party in advance of trial?	Any evidentiary objections should be identified in the joint pre-trial statement, as set forth in the court's trial scheduling order.
9.	Does the judge require the exchange of witness lists before trial?	Yes.
10.	Does the judge require the submission of bench copies of the exhibits before trial?	Yes.
11.	How are the judge's special procedures for presentation of exhibits in the judge's courtroom obtained?	By contacting the courtroom deputy.
12.	Does the judge have any deadline for bringing motions in limine? If so, when are they set.	No, these can be submitted at trial.