

Memorandum

To: All Attorneys Practicing in the Youngstown Bankruptcy Court
From: Judge Kay Woods
Date: March 12, 2018
Subject: Bankruptcy Court Policies and Procedures

INTRODUCTION

This memorandum, which outlines various policies and procedures that have been implemented by the Bankruptcy Court in Youngstown, updates and supersedes the Court's December 1, 2017 memorandum. Please familiarize yourself with these policies and procedures, along with General Orders, Administrative Orders, Local Rules, and other Attorney Information available on the United States Bankruptcy Court Northern District of Ohio website at www.ohnb.uscourts.gov.

COURT HEARING CALENDAR

The Court's schedule for trials, pretrial conferences, and hearings appears on the website as a convenience to counsel and litigants, but should not be considered final. Matters may be added, deleted, or adjourned after the schedule is posted on the website.

All hearings require attendance of counsel in person unless designated as "telephonic."

CONTINUANCES OF HEARINGS

Chapter 7 and 13 Cases

When parties are in agreement, counsel may prepare and file a notice of rescheduled hearing, other than a hearing on confirmation of a chapter 13 plan, on the first request. Any subsequent request(s) to continue a hearing and each request to continue a confirmation hearing must be done by motion (describing the need for the continuance) and require the submission of a proposed order. A motion to continue a hearing should be filed at least two business days prior to the scheduled hearing date and must also be communicated to the **Court by email to JudgeWoods-Reporting@ohnb.uscourts.gov**. Except in emergency circumstances, the Court will not grant any motion to continue filed later than two business days before a hearing.

Chapter 11 and 12 Cases

Parties must obtain hearing dates from the **Court by calling (330) 742-0906**. To continue any hearing or telephonic status conference, a party must file a motion and submit a proposed order.

All Cases

In the absence of an order granting continuance of a matter, parties must appear for the scheduled hearing. **Any questions about whether a matter will proceed should be directed to the Court by calling (330) 742-0906.**

SETTLEMENT OF CONTESTED MATTERS

Once a contested matter is set for hearing, only the movant may report the matter settled. In order to excuse appearances, the movant must **send email notification to JudgeWoods-Reporting@ohnb.uscourts.gov** no later than noon of the business day prior to the scheduled hearing to report the matter settled. The movant must include in the email notification: (i) the hearing date; (ii) the case number; (iii) the debtor's name; (iv) the type of pleading; and (v) all relevant related information. Opposing counsel and any chapter trustee must be copied on the email communication. If counsel fails to timely notify the Court of settlement, attendance at the scheduled hearing will be required.

When a matter is reported settled, the parties must submit an agreed order to the Court no later than 28 days after notifying the Court of settlement or the matter will be reset for hearing. If the Court reschedules the hearing, counsel must appear at the rescheduled hearing unless the Court enters an agreed order prior to such hearing.

CONFIRMATION HEARINGS

The Court will hold a confirmation hearing on a chapter 13 plan (Official Form 113) only if a party-in-interest files an objection to the plan. If more than one objection to a plan is filed, all objections will be considered at a single confirmation hearing. If no objection is filed, the Chapter 13 Trustee may submit the Confirmation Order to the Court for signature. The confirmation hearing cannot be rescheduled or continued by agreement of the parties; continuance of a confirmation hearing can only be accomplished upon motion and an order of the Court.

If a debtor files a modified or amended chapter 13 plan (before or after the Confirmation Order is entered), the debtor is required to (i) serve the modified or amended plan upon all creditors and parties who have requested notice; and (ii) file a certificate of service. *See* General Order 17-1. Any modified or amended plan should utilize the same form document (Youngstown Chapter 13 Plan prior to 12/1/2017 or Official Form 113 on or after 12/1/2017) used for the original chapter 13 plan.

APPEAR AND SHOW CAUSE

Motions

A party may move the Court for an Order to Appear and Show Cause ("OSC") for an alleged violation of the automatic stay or an injunction, but should not notice the OSC motion or

set the motion for hearing. The movant should prepare and submit a proposed order with the OSC motion. The Court will either (i) enter an OSC; or (ii) set the OSC motion for hearing.

If the Court enters an OSC, the hearing on the OSC will go forward in every circumstance. Once the OSC is entered, the hearing is on the order, not the motion; as a consequence, the movant cannot withdraw its OSC motion and is unable to prevent the hearing from occurring by “settlement” or otherwise. The party who is ordered to appear and show cause should not file a response, but must appear at the scheduled hearing.

Orders

The Court issues OSCs for failure to timely file documents and pay fees. When the Court issues an OSC for failure to file the Declaration of Social Security Number (“Declaration”), the Court may strike the hearing if the Declaration is filed within two days after issuance of the OSC.

When the Court issues an OSC for failure to file the Certification of Completion of Personal Financial Management Course (“Certification”), the Court may strike the hearing if the debtor files a motion to extend time to file the Certification at least two business days prior to the hearing on the OSC. IN ALL OTHER CIRCUMSTANCES, hearings on OSCs will go forward.

ABANDONMENT

Prior to the § 341 Meeting, the Court will not grant a motion for abandonment unless the chapter 7 trustee has approved the proposed order granting such motion.

The remedy of abandonment is not applicable in a chapter 13 case.

PAYMENT ADVICES

Pursuant to § 521(a)(1)(B)(iv), the debtor is required to file “copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition.” If the debtor does not have any such payment advices because he or she was not employed during the 60-day period prior to filing the petition or was self-employed, the debtor must file a statement (an affidavit is not required) indicating that the debtor did not receive payment from an employer during such period. The Court may issue a notice of deficiency or OSC if the debtor fails to timely file payment advices or a statement of no payment advices.

OBJECTIONS TO CLAIMS

A party who objects to a proof of claim shall include in the objection: (i) the name of the claimant; and (ii) the claim number. Submission of a proposed order is required.

EVIDENTIARY HEARINGS

Unless the parties have contacted the Court in advance to schedule an evidentiary hearing, all hearings will proceed on argument of counsel only. If an evidentiary hearing is requested, the parties must (i) obtain a date for such evidentiary hearing from the **Court by calling (330) 742-0906**; (ii) provide an estimate of time each party anticipates it will take to present/defend its case; and (iii) identify the number and names of the witnesses to be presented and the number and types of exhibits anticipated to be offered into evidence. Failure to provide this information to the Court may result in denial of the request for an evidentiary hearing.

All evidentiary hearings will be designated as “evidentiary” on the hearing notice.

RECONSIDERATION

A motion for reconsideration should only be filed (i) in extraordinary circumstances to correct a manifest error of law or fact; and (ii) in compliance with Federal Rules of Civil Procedure 59 and 60. A motion for reconsideration is not a substitute for filing a notice of appeal.

The motion should not be noticed for hearing and, absent direction from the Court, the non-moving party should not respond to a motion for reconsideration. In the event a motion for reconsideration is filed, the Court will either: (i) rule on such motion based on its merits and the substance of the underlying order; or (ii) set the motion for hearing. Pursuant to Federal Rule of Bankruptcy Procedure 9011, a pleading constitutes a representation to the Court that a valid basis exists for the pleading. As a consequence, if the Court finds a motion for reconsideration to be without merit, the Court has the authority under Rule 9011(c)(1)(B) to enter an order directing counsel to show cause why he or she should not be sanctioned for violation of Rule 9011(b).

REOPENED CASES

If the Court grants the reopening of a case, the movant will have 90 days from entry of the Court’s order granting such relief to file appropriate pleading(s) or document(s) to prosecute the reopened case for the purpose(s) set forth in the motion. Failure to timely file such pleading(s) or document(s) will result in closure of the case. Any further motion to reopen will require a showing of good cause at a hearing.