

# Memorandum

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**To:** All Attorneys Practicing in the Youngstown Bankruptcy Court  
**From:** Judge Kay Woods  
**Date:** July 15, 2014  
**Subject:** Bankruptcy Court Policies and Procedures

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## **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 January 11, 2013 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](http://www.ohnb.uscourts.gov).

## **COURT HEARING CALENDAR**

The Court's schedule for trials, pretrial conferences and hearings for the upcoming week 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 on the first request. Any subsequent request(s) to continue a hearing must be done by motion (describing the need for the continuance) and requires 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](mailto: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](mailto: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. Counsel may be required to appear at the scheduled hearing for failing to timely notify the Court of a settlement.

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.

### **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. If there is compliance with an OSC for failure to file the Declaration of Social Security Number within two business days after issuance of the OSC, the Court will strike the hearing. If there is compliance with an OSC for failure to file the Certification of Completion of Personal Financial Management Course ("Certification") and a motion to extend time to file the Certification is filed at least two business days prior to the hearing on the OSC, the Court will excuse

appearance at the hearing. IN ALL OTHER CIRCUMSTANCES, the hearing on the OSC 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).

#### **ORDERS GRANTING RELIEF FROM STAY**

The Court cannot excuse compliance with Federal Rule of Bankruptcy Procedure 3002.1. *See In re Adkins*, 477 B.R. 71 (Bankr. N.D. Ohio 2012). Accordingly, a proposed order granting relief from stay that waives compliance with Rule 3002.1 will not be entered and will be returned to the movant for revision without further explanation from the Court. Failure to timely submit a revised order may result in denial of the requested relief for want of prosecution.

#### **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.