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THE BENCH AND BAR COMMITTEE  
FOR THE U.S. BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF GEORGIA PRESENTS

# EVERYTHING YOU NEED TO KNOW ABOUT MOTION PRACTICE

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# EVERYTHING YOU NEED TO KNOW ABOUT MOTION PRACTICE

1. Motion filing requirements
2. Service
3. Hearings
4. Proposed orders

# MOTIONS

- If your judge has indicated their preferred procedure for the relief you are seeking, follow their procedure!
- Every judge in this district has a Judge's Information webpage on the Court's website.
  - Check your judge's calendar procedures and preferred forms before you begin your motion.
- If you are seeking relief on an expedited basis, follow your judge's procedures for scheduling the expedited hearing.
  - For example, on Judge Hagenau's Information webpage, the Available Hearing Dates states "Attorneys are requested to contact Nicole Williams (404) 215-1193 to obtain a date and time for an expedited hearing."
  - Judges may prefer email communications with chambers or may have a preferred contact to schedule expedited matters.

# MOTIONS: TITLE, CAPTION, AND SIGNATURE BLOCK

## BLR 5005-I. Format Requirements

- (f) Style. The caption of all pleadings and other papers must contain the chapter number (7, 11, 12, 13, or 15) under which the case is pending, the debtor's name, the case number, and the initials of the Bankruptcy Judge to whom the case is assigned.
- (i) Titles on Papers. All pleadings and other papers presented to the Bankruptcy Clerk for filing must bear clear designations of their content. Designations of pleadings and other papers must conform to the nomenclature set forth in Rule 7 of the Federal Rules of Civil Procedure. When a document contains multiple contents (such as an answer to a complaint and a counterclaim), all matters contained in the document must be described in the caption on the first page of the document, except that a certificate of service should not be included in the caption.
- (e) Attorney Identification. The following must appear on every pleading and other paper that an attorney files: the attorney's name, complete address (including post office box or drawer number and street address), telephone number, e-mail address, and either the attorney's Georgia Bar number or, if the attorney is not a member of the Georgia Bar, the state and bar number of the bar in which the attorney is a member and regularly practices.

# MOTIONS

- Well drafted pleadings include:
  - A “comes now” statement or other opening statement,
  - A body outlining the facts and legal issues, and
  - A wherefore clause clearly stating the relief requested.
- Be sure to attach all relevant exhibits.

# THE BODY OF THE MOTION

- Establish standing for the relief requested.
- When requesting monetary relief, state the exact amount requested and how that amount was calculated if it is not obvious.
  - State the interest rate if you want interest.
  - Make sure that any equitable relief you request is available as a result of the type of pleading that you have filed.
    - For example, a discharge is not going to be denied by motion, that requires an adversary proceeding.
- Include all necessary information and make all arguments in the motion.
- Support your requested relief with authority.
  - Cite statutes and cases that support your position.
  - If you want to recover attorney's fees, then provide authority showing why your client is entitled to those fees in the case.
  - Do not expect that the Court will make your arguments for you. You make the arguments, and the Court decides.

# MOTIONS: CONTRACTS AND FORM PLEADINGS

- If asking for the approval of a contract or other document, be sure to:
  - Attach all relevant exhibits; and
  - Give a brief summary of the exhibits.
    - For example, on a motion to sell a debtor's residence, include the purchase and sale agreement and all other relevant documents as exhibits AND include the purchase price, closing date, and relevant liens in the motion.
- Before using a “form” pleading, check and make sure that the form applies and that it cites authority that is valid.

# MOTIONS TO EXTEND OR IMPOSE THE AUTOMATIC STAY

- For a Motion to Extend the Automatic Stay under § 362(c)(3), you must schedule the hearing on the motion *before* the 31st day after the case was filed.
  - “[T]he court may extend the stay in particular cases as to any or all creditors . . . after notice and a hearing completed before the expiration of the 30-day period.” 11 U.S.C. § 362(c)(3)(B).
- For a Motion to Impose the Automatic Stay under § 362(c)(4), the Bankruptcy Code allows 30 days from the filing of the case for a hearing to impose the automatic stay.
  - Check your judge’s procedures.
  - Some judges require a showing sufficient to meet the preliminary injunction standard to impose the stay if the hearing is not held within 30 days of the filing of the case. This showing includes either evidence presented to the Court or proffered to the Court.



# MOTIONS TO REOPEN BANKRUPTCY CASES

- Determine whether a trustee needs to be reappointed.
  - If adding creditors to a chapter 7 case without distribution or reopening a case to file a 1328 certificate, no trustee needs to be reappointed.
  - If adding assets, then a trustee will likely need to be reappointed.
- The order itself should not *order* the reappointment of a trustee, but it should *direct* the United States Trustee to appoint a trustee.

# SERVICE

- Judge James E. Massey (Retired) drafted an excellent manual on service of pleadings in contested matters.
  - The manual is available at: [https://www.ganb.uscourts.gov/sites/default/files/service\\_manual\\_2021.pdf](https://www.ganb.uscourts.gov/sites/default/files/service_manual_2021.pdf)
- The Secretary of State's website is an excellent resource to find the correct Officer and/or Registered Agent: <https://ecorp.sos.ga.gov/BusinessSearch>.
- You must get the name of the individual or entity correct.
  - Failing to do so may result in an Order or judgment that is worthless.

# SERVICE

- Service on an Officer or Agency of the United States of America:
  - Requires at least 2 mailings:
    - One addressed to the Civil Clerk at the Office of the United States Attorney for the District in which the action is commenced and
    - Another addressed to the Attorney General of the United States.
- The United States Trustee
  - The United States Trustee is *not* automatically included on the mailing matrix.
  - Fed. R. Bankr. P. 9034 lists motions you are *required* to serve on the United States Trustee.
- If the Georgia Department of Revenue is a party, only the Commissioner or their designee may accept service:

State Revenue Commissioner  
Georgia Department of Revenue  
1800 Century Boulevard, Suite 15300  
Atlanta, GA 30345

# SERVICE

- Joint Cases
  - Both debtors must be served separately, *even if their mailing addresses are the same*. That means two separate copies in two separate stamped and addressed envelopes with two separate names.
- Depository Institutions Insured by the FDIC
  - Fed. R. Bankr. P. 3007(a)(2)(A)(ii) excludes credit unions.
  - Fed. R. Bankr. P. 7004(h) requires service via certified mail addressed to an officer unless:
    - The institution has appeared via its attorney (then the attorney can be served by first class mail),
    - The Court Orders otherwise, or
    - The institution has waived, in writing, its right to service via certified mail.
- Query: if you serve a party via certified mail when first class mail is required by the Rules, is that service proper?
- Mailing Matrix
  - Use the matrix dated the same date as the date you are serving the Motion.

# SERVICE

- **General Orders**
  - 24-2018 (Voluntary Notice Procedures in Chapters 7, 11, 12, and 13)
  - 25-2018 (Electronic Service of Pleadings)
  - 41-2020 (Requiring Local Form for Chapter 13 Plans and Related Procedures)
  - 44-2021 (Procedures for the filing, service, and management of HSDs)
- **BLR**
  - 5005-8 (Service of Electronically Filed Documents)
  - 7005-1 (Proof of Service)
  - 9007-2 (Service of Other Notices)
- **Federal Rules of Bankruptcy Procedure**
  - 3007 (Objections to Claims)
  - 3012 (Determining the Amount of Secured and Priority Claims)
  - 3015 (Filing, Objection to Confirmation, Effect of Confirmation, and Modification of a Plan in a Chapter 12 or a Chapter 13 Case)
  - 7004 (Process; Service of Summons, Complaint)
  - 9006 (Computing and Extending Time; Time for Motion Papers)
  - 9013 (Motions: Form and Service)
  - 9014 (Contested Matters)

# HEARINGS

- Open calendar procedures
  - Attorneys must choose hearing dates for motions and applications and serve notices of hearings, except as otherwise instructed. BLR 9007-2. Consult judge's webpage for particulars.
- Special set hearings
  - Check Judge's webpage for instructions about hearings that must be specially set (e.g., likely to exceed a set amount of time) and hearings that will be in person (e.g., evidentiary hearing).
- Voluntary notice procedures
  - **Second Amended and Restated General Order No. 24-2018:** procedures for counsel to notice hearings and provide an opportunity to object to certain types of relief requested in cases filed under Chapters 7, 11, 12 and 13.
  - Form of Notice (Exhibit A).

# HEARINGS: CONTINUANCES AND CONFLICTS

- Confer with opposing counsel, trustee
  - Confer with opposing counsel prior to the hearing to resolve what can be resolved and narrow the issues to be presented to and decided by the court.
- Continuances, generally
  - Continuances cannot be stipulated; must be approved by court. BLR 5071-1.
- Absence of witness
  - Motion for continuance due to absence of a witness must identify steps taken to secure attendance; nature of witness's testimony; and when witness will be available. Must include physician certificate if illness is alleged. Stipulation of witness's testimony constitutes cause to deny the motion. BLR 5071-2
- Conflict with 341 meeting
  - When lead counsel has a hearing scheduled at the same time as a 341 meeting, the attorney must give prompt notice of the conflict and a proposed resolution to trustee or US Trustee. BLR 5071-3.

# HEARINGS: EXHIBITS

- Review BLR 9017-1.
- A party that expects to offer exhibits into evidence must –
  - (1) sequentially number the exhibits prior to the hearing and mark each exhibit with such number and the name of the introducing party or other appropriate identification (e.g., movant, respondent, debtor, creditor, trustee);
  - (2) provide an exhibit list to opposing counsel, to any unrepresented party, and to the court not later than the commencement of the hearing if there are more than five exhibits; and
  - (3) provide a copy of any exhibit for inspection and use by opposing counsel or unrepresented parties at the time it is first used at a hearing or trial.



# HEARINGS:VIRTUAL COURT HEARINGS

- Refer to each judge's chambers page for specific calendar and hearing information.
- To appear virtually, click the appropriate link to join the judges' virtual hearing room.
  - Join 10-15 minutes before the hearing time.
  - Contact the courtroom deputy by email if you have connection difficulties.
  - Make sure your first and last name are displayed on screen.
  - Place all calls on mute unless addressing the court.
  - Pursuant to BLR 5073-I, you are prohibited from recording or broadcasting the proceedings.
  - Be mindful of your background.
  - Attend from a quiet place, free of background noises.
  - All participants should dress and act as if they were in a courtroom.
  - Use headphones or earphones to block background noises.
  - Identify yourself each time you speak.

# HEARINGS:TELEPHONIC APPEARANCES

- Dial the appropriate toll-free number shown on the Clerk's website.
- Enter the access code associated with the toll-free number.
- Dial in at least 10 minutes before the hearing time.
- Place all phones on mute. Under no circumstances should you place this call on hold.
- Pursuant to BLR 5073-I, you are prohibited from recording or broadcasting the proceedings conducted by the United States Bankruptcy Court.
- Each time you speak, identify yourself for the record.

# PROPOSED ORDER: FORMAT

- Leave a 4” margin at the top of the first page.
- Be sure the style of the case is correct.
  - Check you have the right details including the:
    - Division,
    - Debtor’s name,
    - Case number,
    - Chapter, and
    - Judge.
- Include “consent” in the title of the order if it is applicable to your specific case.
- Text of your order: include a summary and actual declaration of the order.
- “END OF DOCUMENT” must be placed after the end of the text of the proposed order.

Note: Leave 4 inch margin at top of first page only

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
[Name of Division] DIVISION

IN RE:

[Name of Debtor(s)],

Debtor(s),

[Name of Movant],

Movant,

v.

[Name of Debtor(s)]

[Name of Trustee]

Respondents.

CHAPTER: [xx]

JUDGE: [Name of Judge]

CASE NO. [00-00000-xxx]

**ORDER**

← Note: Include “Consent” in title, if applicable

*Text of Order*

**END OF DOCUMENT**

(Signatures on Next Page)

# PROPOSED ORDER: FORMAT

- List all parties that have consented to the order or presented no opposition.
- Repeat the signature blocks as many times necessary.
- Don't forget about the distribution list:
  - Name every person and address to be served.
- You can find a copy of a Proposed Order in basic captioned format here:  
[https://www.ganb.uscourts.gov/Ops/OpsLive/LINKS/CaptionedFormat\\_Order.pdf](https://www.ganb.uscourts.gov/Ops/OpsLive/LINKS/CaptionedFormat_Order.pdf)

CONSENTED TO BY/NO OPPOSITION:

← Note: Only include this label if applicable

s/ [Name of Attorney]

[Name of Attorney]

Georgia Bar No.: [Georgia Bar No.]

[Attorney's street address]

[Attorney's city, state, zip]

[Attorney's phone]

[Attorney's e-mail address]

[Party's role in case]

*Repeat as necessary*

## DISTRIBUTION LIST

*Names and addresses of parties to be served*

## BLR 9013-2 PREPARATION OF PROPOSED ORDERS.

- Be mindful all orders are due within 7 days from the date of the pronouncement or scheduled hearing.
- The order should list the hearing date in which the matter was heard or the scheduled hearing date.
- The proposed order should accurately reflect the Bankruptcy Judge's verbal ruling or the proceedings at the call of the matter, as applicable.
  - Do NOT add relief to a proposed order that was not requested in your motion or prayer.
- Every order should be signed by each party and/or consenting party.
- The consenting parties must be properly identified:
  - Refer to formatting slides; and
  - Each attorney must be identified in accordance with BLR 5005-1.
- Email Addresses for Chapter 13 Order Submission:
  - [orders@l3trusteeatlanta.com](mailto:orders@l3trusteeatlanta.com)
  - <https://www.njwtrustee.com/attorney-resources/e-orders-and-taxes/>
  - [orders@atlchl3tt.com](mailto:orders@atlchl3tt.com)

# UPLOADING A PROPOSED ORDER

- Be sure your order is in PDF format
- Have the case number available
- Your order must relate to a specific document in a case/proceeding
- You will then select the following:
  - Single order upload
  - Enter your case number
  - Identify the Docket Number
  - Select the type of document i.e. (motion, answer, appeal, misc, trustee)
  - Check the appropriate document that relates to your order
  - Specify type of order (i.e. consent, no opp, emergency, other)
- Wait for confirmation
- If your order has deficiencies, respond quickly and kindly to the court and upload your corrected order accordingly.
- A step by step picture guide on uploading orders can be found here:  
[https://www.ganb.uscourts.gov/sites/default/files/e-orders\\_guide\\_for\\_attorneys\\_04-2015.pdf](https://www.ganb.uscourts.gov/sites/default/files/e-orders_guide_for_attorneys_04-2015.pdf)



Please visit <https://www.ganb.uscourts.gov/bench-and-bar-committee> for the materials and program recording.

THANK YOU!

