

OPEN CALENDAR PROCEDURES

Instructions for Self-Selecting Hearing Dates and Times in Cases Assigned to Judge Cavender

- 1) Attorneys must choose hearing dates for motions and applications and serve notices of hearings pursuant to this Open Calendar Procedure, except as provided in paragraph 12 below. A list of currently available hearing dates is available on the Court's website at www.ganb.uscourts.gov (click on the Judges' Information tab from the menu across the top of the screen and then on Judge Cavender's name).
- 2) Notwithstanding Bankruptcy Rule 9006(d), the hearing date you select must be at least fourteen (14) days after the date on which you serve the motion and notice of hearing. The exceptions to the minimum 14-day notice period are motions to extend or impose the automatic stay under Section 362(c). Motions to extend or impose stay may be heard ten (10) days after the date on which the motion and notice of hearing are served. Some types of matters may require a longer lead time between the date of service of the motion or application and notice and the date of the hearing. *See, e.g.,* Bankruptcy Rules 2002 and 3007 and B.L.R. 7007-1(b). If a rule gives a respondent a period of time to file a response, the hearing date picked must be at least two (2) business days after the last day on which a response could be timely filed. Remember that, if the motion or other pleading that requires the filing of a response or some other act is served by mail, Bankruptcy Rule 9006(f) adds three days to the prescribed period.
- 3) Note that the available dates and times are grouped by the Chapters under which the case is filed and the types of matters to be heard. (A motion to dismiss or convert a Chapter 13 case or for relief from stay, however, may be scheduled for hearing at the time of the confirmation hearing in that case.) **ALWAYS CHECK THE LIST OF CURRENTLY AVAILABLE DATES WHEN SETTING A HEARING BECAUSE A DATE MAY BE REMOVED FROM THE LIST AT ANY TIME.**
- 4) Prepare the notice of hearing into which you will insert the date, time and location that you selected from the list of available dates and times. Combine the notice, the motion, application or objection, and the certificate of service into one document. The certificate of service must mention service of both the motion and the notice of hearing. Briefs may be combined with the document containing the motion or may be filed separately.
- 5) File the motion or application and notice of hearing no later than three (3) days after it is served.
- 6) If you file using paper rather than through the CM/ECF system, you must deliver to Chambers a copy of the motion, notice of hearing and certificate of service showing the Clerk's filing stamp within one (1) day of filing.

- 7) If you file electronically, you may use the Open Calendar Procedure to reset a hearing date if all parties agree by filing an amended notice of hearing on which you indicate the agreement of all parties.
- 8) You may set, but are not required to set, a hearing in an **adversary proceeding**, other than those types of hearings listed in paragraph 12 below. If the movant in an adversary proceeding does not serve a notice of hearing with the motion, a respondent desiring a hearing may schedule one by serving and filing a notice of hearing separate and apart from the response to the motion. If no party sets a hearing, the matter will be treated as submitted after the last day on which a response or reply may be timely filed.
- 9) If you are using this procedure for a Chapter 7 relief from stay motion that will be heard before the scheduled meeting of creditors, you must (1) call the Chapter 7 Trustee and explain why a hearing is necessary prior to the Trustee's ability to examine the debtor and evaluate the case at the 341 meeting, and (2) set forth the explanation in your motion and provide the date you made the required call to the Chapter 7 Trustee.
- 10) Do not call Chambers to find out if the matter has been put on the calendar. You may view the calendar in the CM/ECF system, which you may access through PACER, even if you do not file electronically.
- 11) Counsel with conflicts should send a conflict letter to the Court in advance listing their conflicts and proposed resolutions. Counsel is expected to comply with BLR 5071, N.D. Ga. In addition, mass calendars are a way of life in Bankruptcy Court, and it is not unusual for different judges to schedule mass calendars at the same time. The judges understand that this scheduling problem gives rise to conflicts and are generally accommodating to counsel. If you have a mass calendar conflict that requires you to be in another courtroom in the bankruptcy court, call or report to the courtroom deputy clerk before the start of the hearing to identify your cases. Your cases will be marked and held for your report.

12) Do NOT use this procedure –

- to schedule trials or pretrial conferences in adversary proceedings, confirmation hearings on plans in Chapter 11 cases or confirmation hearings in Chapter 13 cases, except that you may schedule a motion seeking confirmation of a modification to a plan already confirmed in a Chapter 13 case.

- to schedule a hearing on an emergency motion or on a motion to shorten the time for holding a hearing to less than fourteen (14) days from the filing and service of the motion. Instead, file the motion and call the Courtroom Deputy Clerk for a hearing date and time, and then, unless instructed otherwise, schedule the hearing on the date and at the time provided by the Courtroom Deputy Clerk.

- to schedule a hearing on a motion or application if it is one routinely granted without a hearing (e.g., an application to employ professionals, a motion to take a Rule 2004 examination, a motion to extend time to file schedules, a motion for emergency ex parte relief from the stay pursuant to B.L.R. 4001, motion to vacate or terminate EDO, motion to withdraw as counsel or substitution of counsel and motion in chapter 11 cases to set the bar date to file proofs of claims).

- to schedule a hearing on a motion to avoid liens or a motion to redeem. (The Court will set hearings on those motions if a response is filed – see B.L.R. 6008.).

- matters requiring the presentation of evidence.

13) Attorneys should be sensitive to the time constraints imposed by the number of motions on a calendar. Motions that take longer than 20 minutes to hear could be reset or heard in part and continued, which could prove inconvenient, if not expensive, to the parties. Therefore, with regard to motions that are likely to be complicated, movant's attorney should consider whether it would be preferable to obtain a specially set hearing for that matter. **Contact Monique Chapple at (404) 215-1004 (if unavailable, call Paige Dopson at (404) 215-1094)** to obtain a date and time for a hearing on a matter that is likely to take significant time.