Educational Materials

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Gain the Hometown Advantage, Even When You Are an Outsider: Understand Locality Differences in Commercial and Consumer Matters

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Gain the Hometown Advantage, Even When You Are an Outsider: Understanding Locality Differences in Commercial and Consumer Matters

Roundtable Discussion

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Gain the Hometown Advantage, Even When You Are an Outsider: Understanding Locality Differences in Commercial and Consumer Matters

If federal bankruptcy laws are supposed to be consistent in every state, then why are the local procedures so different? How can anyone keep up, especially with those pesky "unwritten rules?" Do you want to be better prepared to navigate the various bankruptcy courts throughout the United States?

The roundtable discussion with judges and practitioners from around the country and these written materials are intended to be helpful tools for the bar and the bench as we participate in a lively debate and share the how's and why's of the different local procedures.

Overview of Materials and Surveys

In answering the question of what out-of-town counsel can do to build credibility with the court, a bankruptcy judge from New York observed: "I have always used a basic practice test. Any out-of-town lawyer who thinks it is appropriate to order pastrami on white bread with mayonnaise is escorted from my courtroom."

Well, that about sums it up, doesn't it?

But we at the NCBJ are an ambitious lot. With the goal of "building bridges" and identifying and mitigating concerns of practitioners to make practice easier across jurisdictions, we decided to seek input and review various local rules in order to understand the areas of greatest concern where perhaps concrete actions can be taken. Likewise, we wanted to solicit input from judges about their expectations and their rationale for doing certain things the way they do. Accordingly, the Shepherds and Moderators of this session crafted two surveys, one for the practitioners and one for the judges, to act as our guide. They also reviewed the local rules and procedures of some of the busiest courts in the nation. The two surveys conducted are outlined and discussed herein. In addition, summaries of certain key topics in the local rules with links to the local rules themselves are included.

I. Practitioner Survey

The goal of the practitioner survey was to identify practitioners' concerns and encouraged responses by posing the following broad questions:

- Do the varying local procedures from court to court throughout the country drive you crazy?
- Would you like to better understand why these variations exist?
- How can you better navigate through the courts from city to city and perhaps enlighten your colleagues and the judges on changes that might be helpful?

The survey was constructed to capture (a) the profile of respondents to insure we obtained participation from a broad spectrum of bankruptcy practitioners; and (b) with respect to specific

areas of bankruptcy practice, an understanding of how much variation exists across courts, the degree to which such variation impacts practitioners' decision-making and approach to cases, and whether venue choice is affected as a result (see Addendum I for survey).

In order to facilitate the surveying of practitioners, eleven areas of potential concern regarding variation were identified:

- Motion Practice (Filing, Emergency Motions, Hearing Dates, Continuances, etc.)
- Tentative Rulings
- Status Reports/Conferences
- Introducing/Objections to Evidence & Discovery Disputes
- Relief from Stay Motions
- Communications with Judge's Staff
- Whether Courts Require Proffer of Evidence in Uncontested and/or Consent Matters
- Length of Appeals Process
- Settlement & Mediation Procedures
- Local Rules
- Fee Applications/Approvals/Rates

Additionally, an opportunity was provided for respondents to specify a particular area of concern, regardless of whether it fell into one of the categories listed above or not. These responses have been considered in evaluating the survey results.

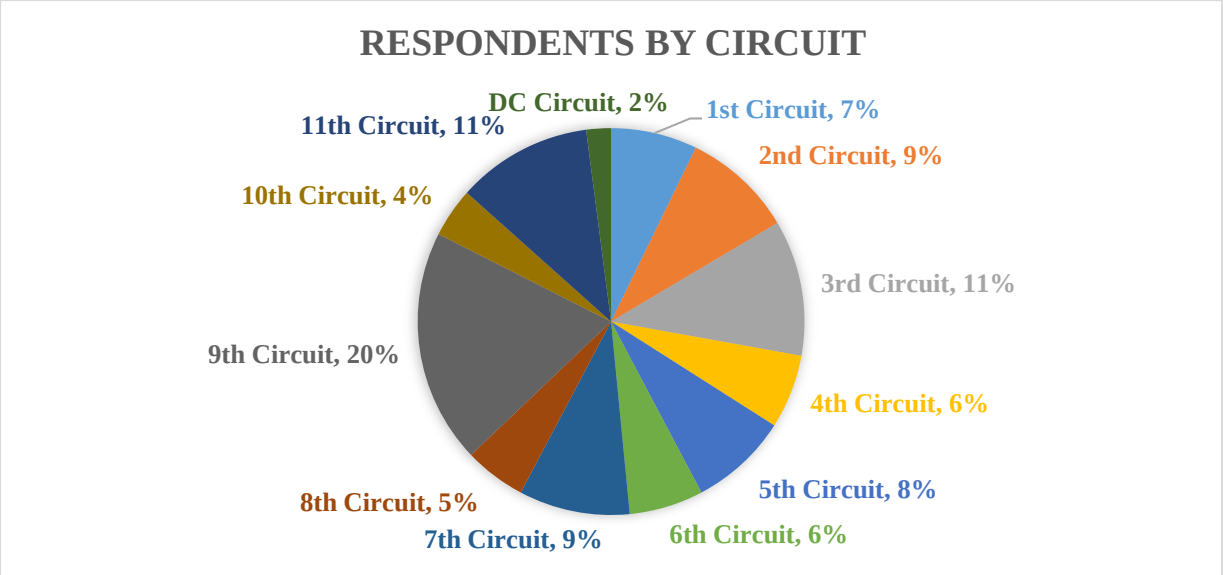
Practitioner Survey Results

Following below are the survey results that will help us formulate the building blocks of our Locality Session discussion:

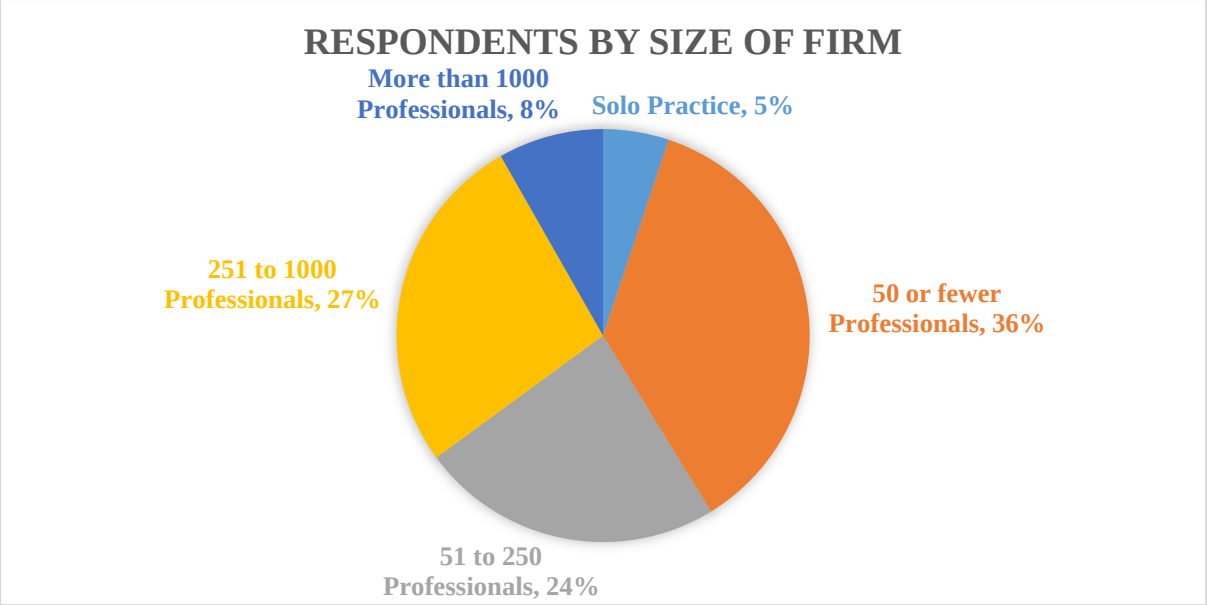
A. Respondents' Profile

- 88% and 12% of respondents practice business and consumer bankruptcy, respectively.

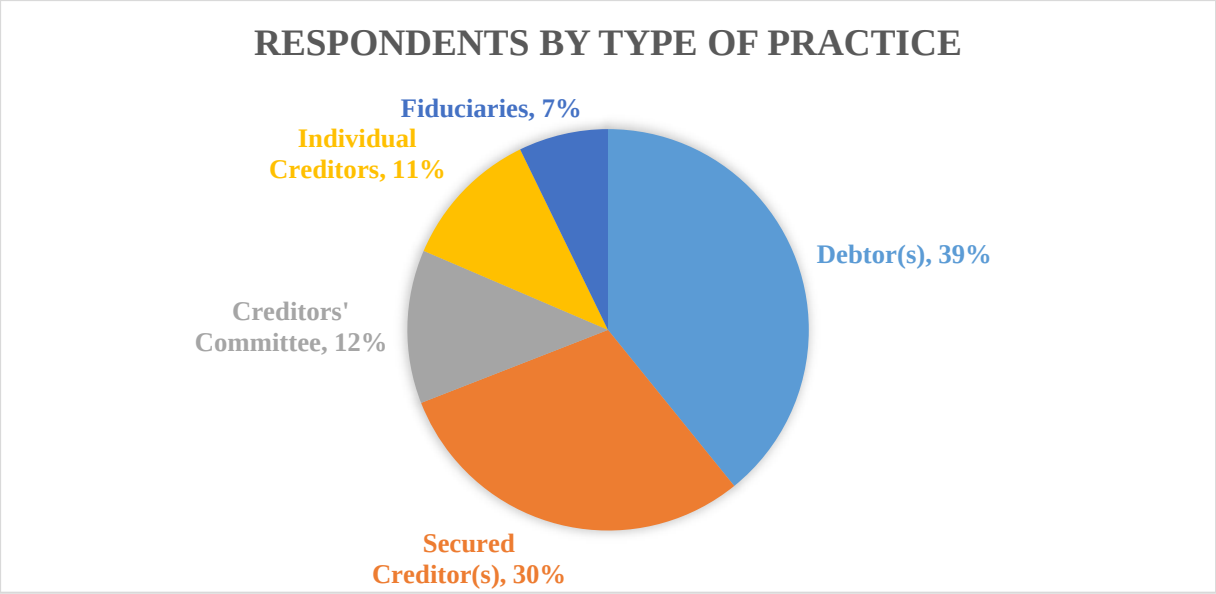
- Respondents practice in all circuits across the country:



- Respondents practice in firms of various sizes, with the majority working at mid-size firms with fewer than 1,000 professionals:



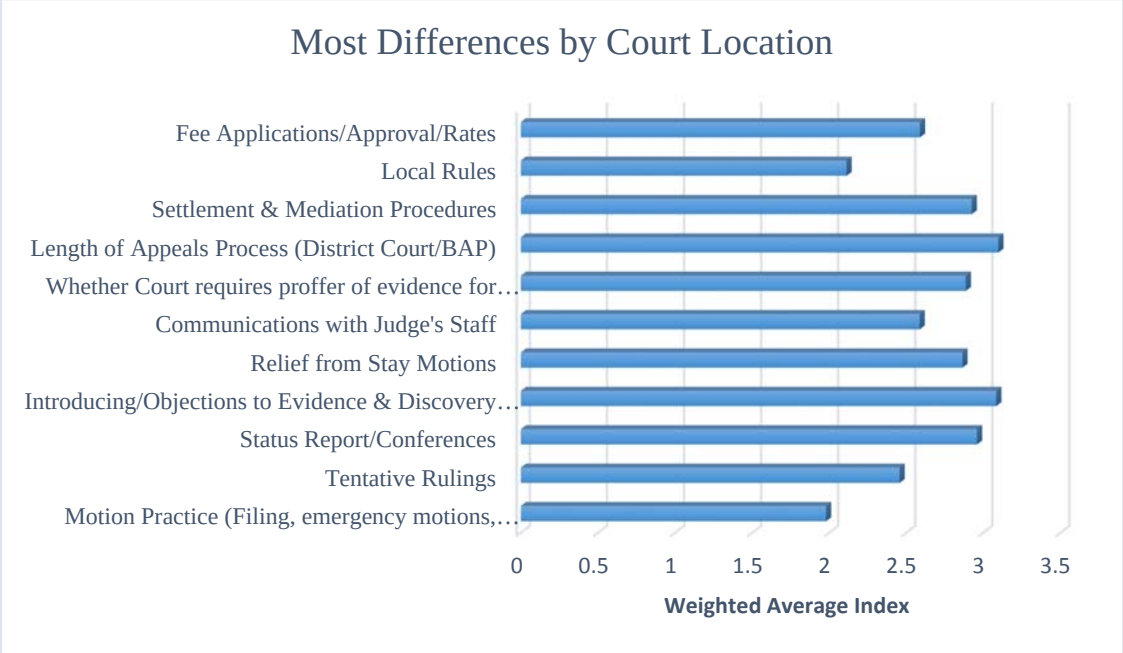
- Respondents' focus of representation is relatively evenly divided among type of practice:



B. Respondents' Feedback

- Question #1: How much conflict or difference do you find among the various court locations regarding the identified areas (1=Most differences; 5=Fewest differences)?

The areas in which respondents believe that the most differences or conflicts exist among court locations are:



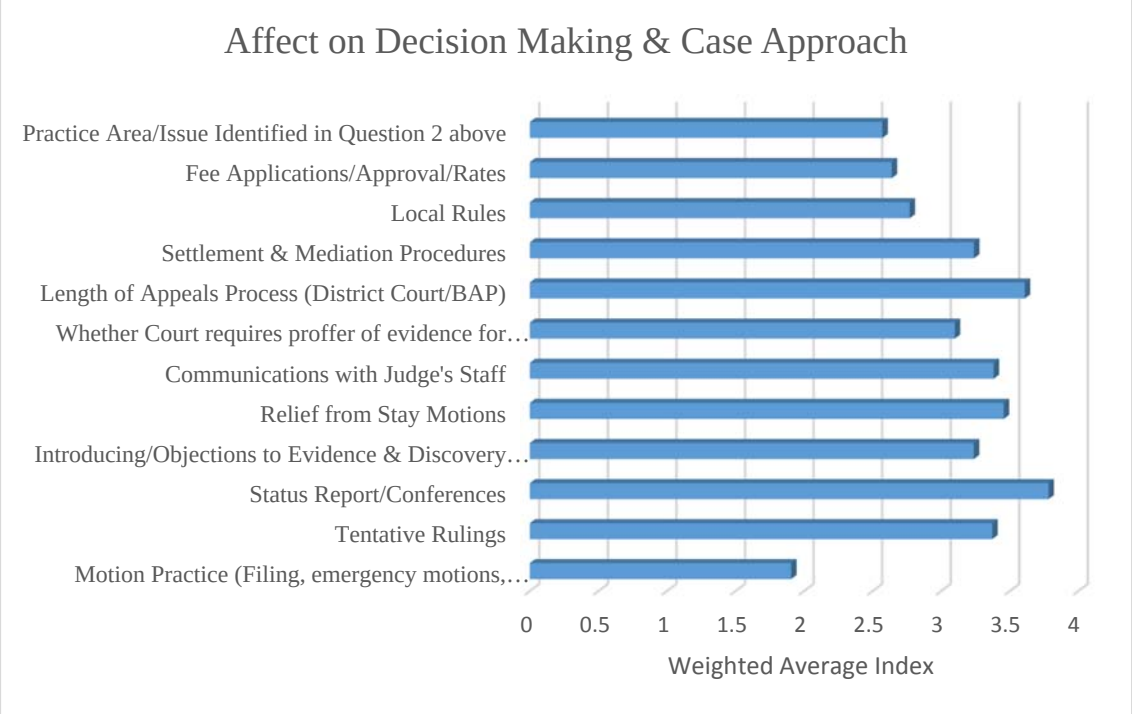
As shown above, respondents believe that motion practice and local rules present the most conflict among jurisdictions.

- Question #2: Describe one (1) other practice area/issue in which you find significant conflicts/differences among court locations (see Addendum II for respondent answers).

  Supporting the results from Question 1 above, the preponderance of write-in concerns centered on motion practice and local rules. In particular, respondents focused on the timeframe and requirements for motions (e.g., hearing dates, noticing, response times) and hearings, as well as the availability of telephonic hearings to reduce burden and cost of in-person hearings and procedural requirements.

- Question #3: Does the difference in locality on the topics below affect your decision making and approach to cases (1=Biggest impact; 5=Least impact)?

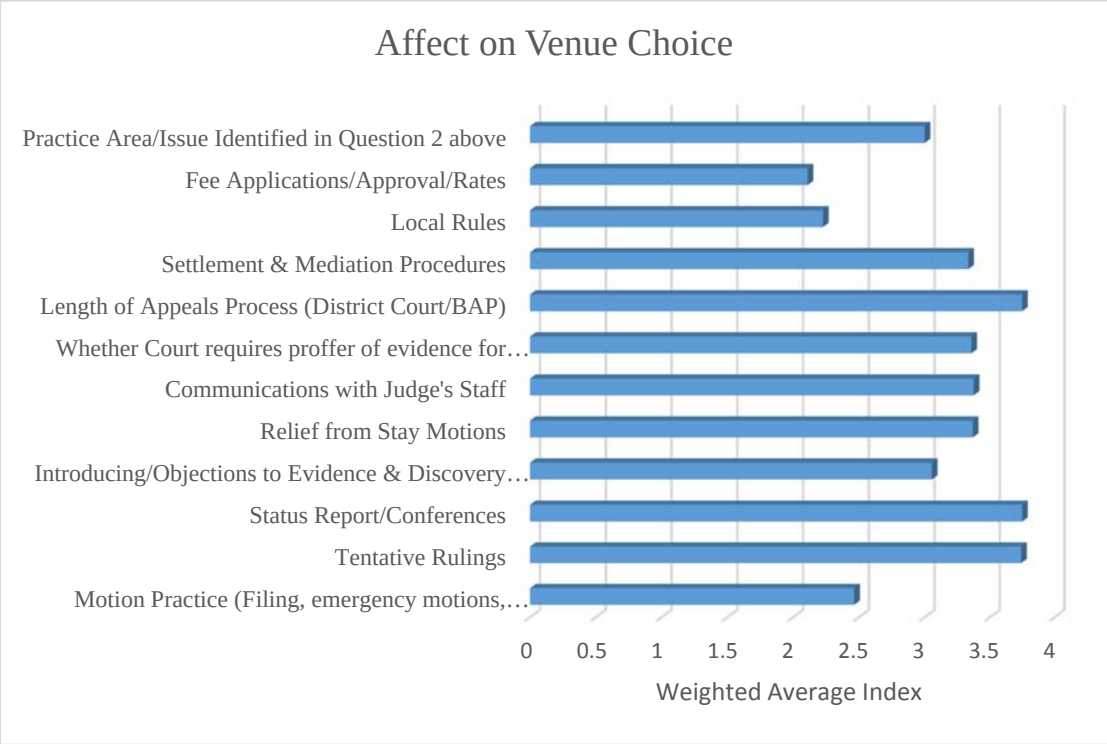
  The respondents' views of the areas with the biggest impact on their decision-making and approach to cases follow below:



The three areas most impacting respondents' decision-making and approach to cases are (i) motion practice, including fee applications/approvals/rates, (ii) local rules, and (iii) requirements for evidence for uncontested and consent matters.

- Question #4: Do you believe that the differences in locality on the topics below affect the venue choice (1=Always; 5=Almost never)?

  Respondents' views of areas of difference in locality most affecting venue choice follow below:



  Local rules, fee applications/approvals/rates, motion practice, and issues regarding requirements of evidence most impact respondents' choice of venue.

Summary

Approximately 100 respondents consistently cited motion practice, local rules, and requirements of evidence for uncontested or consent matters as the most influential on their approach to cases or impact on their practice. These topics will form the core of our Locality Session's lively dialogue.

II. Judges' Survey

Recognizing the usefulness of the practitioners' feedback for judges about what impacts them most, the Shepherds and Moderators also thought it would be useful for practitioners to hear from judges regarding their observations about best and worst practices. Accordingly, we asked bankruptcy judges across the country to answer the following two questions:

- 1. How does a professional who does not regularly appear before you quickly build credibility before you?

- 2. How does such a professional lose credibility? And, if it is lost, how can that professional recover?

The judges were asked for their immediate and visceral reaction to these questions. Judges from every judicial circuit responded promptly and quite uniformly. The judges were NOT sent the practitioners' survey, so they did not know either what was asked of practitioners or the results of that survey. Even so, the judges' responses to their survey matched the practitioners' responses quite closely in one key respect. Namely, the practitioners responded that one of the major areas of the most conflict among jurisdictions that impacts their approach to cases and venue choice is the local rules. At the same time, the judges overwhelmingly observed that one of the best ways professionals who do not regularly appear before a judge can quickly build credibility is to know the local rules and hire competent local counsel who can guide them in that respect. Telling the court that they "are not from around here" and thus do not know the local rules and procedures is not an effective way for practitioners to establish credibility. The hue and cry from the judges is "do your homework," "be prepared," and "learn the local rules or get competent local counsel to help." And NEVER, EVER say to the judge, "This is how we do it in XXX jurisdiction"—especially Delaware, unless, of course, you are IN Delaware. (Sorry President Mary W!)

Based on the survey results, we expect that the discussion about local rules and why certain things are done in certain ways from court to court will make for an interesting discussion. Why do we all have to do things so differently? The Bankruptcy Code is a federal statute. Wouldn't it be nice if we had a system which operated in a more uniform manner?

The reality, however, is that we have 11 federal circuits and 94 districts. Generally, each district has its own local rules, and then each of the bankruptcy courts within those 94 districts has *its* own local rules. Structuring a system in which everything is done in the same way in each district would be impossible. The local rules do not just reflect the various idiosyncrasies of the local judges (though it may seem like that sometimes); they also reflect practical considerations, such as the size of the district, the ease of in-person appearances, and the demographics of the typical debtors (not too many family farmers in Manhattan!). But that does not mean that some things cannot be done in a more uniform way. We look forward to your debate and input on these issues.

The Judges' Other Comments

Interestingly, in addition to their observations about local rules, nearly all of the judges stated that the most effective way to build credibility with the court is to be pleasant and respectful and not mistreat court staff or local lawyers. Yes, decent common courtesy is one of the best ways to be a successful lawyer in most courtrooms!

It was incredible to the Shepherds and Moderators in reviewing the judges' responses to see them repeatedly observe that the key to success in the courtroom is to do those obvious things your mothers told you to do since the day you went off to school: "Be prepared." "Do your homework." "Be polite." It is also worth noting that this goes both ways. As Judge Bob Nugent from Wichita, Kansas observed: "It's incumbent on [judges] to build credibility with [out-of-town counsel] by being respectful and welcoming and avoiding the appearance of home-towning."

Finally, most of the judges responding to the survey indicated that it is not impossible to regain lost credibility but that first impressions are hard to overcome. The judges' advice: "Make apologies sincere," "make amends," "accept responsibility." Again, all things everyone's mothers taught them, or tried to!

III. Cross-Comparison and Analysis of Local Bankruptcy Rules

Introduction

With the goal of "building bridges" and identifying and mitigating concerns of practitioners to make practice easier across jurisdictions, the Shepherds and Moderators of this program reviewed the local rules and procedures of some of the busiest jurisdictions in the nation: the Southern District of New York ("New York"); the District of Delaware ("Delaware"); the Southern District of Florida ("Florida"); the Central District of California ("California"); the Northern District of Texas ("Texas"); the Northern District of Georgia ("Georgia"); the Northern District of Illinois ("Illinois"); and the District of Puerto Rico ("Puerto Rico") (collectively the "Jurisdictions"). [1]

These materials are summary in nature and intended to help identify the differences among these jurisdictions. Practitioners are advised to review the applicable local rules when practicing in these courts and not to solely rely on these materials.

[1] The designation of Not Applicable ("N/A") means that the local rules do not discuss the matter. Depending on the jurisdiction, however, a judge may address the matter on his or her corresponding webpage.

Topic Areas for Local Rules

A. Emergency Hearings

Brief Analysis

All of the Jurisdictions have specific guidelines regarding emergency hearings, some guidelines as a general matter and some with respect to specific instances. The Jurisdictions, however, impose different burdens on a movant to obtain an emergency hearing.

On one end of the spectrum, Jurisdictions Texas imposes a nominal burden on movants to obtain an emergency hearing. In these jurisdictions, the local rules do not provide for an explicit standard, but require the movant to list the reason for which a hearing is requested. Moreover, Delaware is the only jurisdiction that expressly states that a court may *sua sponte* schedule an emergency hearing.

Alternatively, Jurisdictions like Georgia and California fall in the middle, imposing a more significant burden on movants in order to obtain an emergency hearing. These jurisdictions require a movant to justify why the court should reduce other ordinary requirements such as the time period for notice and a hearing, establishing that an emergency is not a *per se* right.

Jurisdictions such as Illinois and New York impose the highest threshold burden, requiring movants to demonstrate irreparable harm. The analysis appears somewhat analogous to the standard to obtain an injunction. However, in Illinois, a motion may generally be heard on only 72 hours' notice if service is made personally or by electronic means. Thus, requesting that a matter be heard on an emergency basis means that it be heard in less than 72 hours.

Notwithstanding that emergency hearings are a vital component of the litigation process, "[l]awyers are notorious for requesting emergency hearings in bankruptcy cases." Hon. Stacey G. C. Jernigan, Stranger-Than-Fiction Moments in Court: The Best of the Best, AM. BANKR. INST. J., April 2014, at 46, 109. While lawyers may often purport that exigencies necessitate an emergency hearing, the alleged "emergency often does not quite seem like [one] to the court." Id. (quotations omitted). Therefore, the corresponding jurisdictional burdens regarding emergency hearings are likely a response to the bankruptcy court's inundation by such requests.

Summary of Emergency Hearing Rules

1. United States Bankruptcy Court for the District of Puerto Rico

In Puerto Rico, Local Rule 9013-1 governs emergency hearings. Pursuant to the rule, a movant must demonstrate (1) that there is a true need for an urgent hearing; (2) the urgency is not a result of lack of due diligence; and, (3) a *bona fide* effort to resolve the issue absent a hearing has been made. Moreover, "[t]he party filing the motion must make a good faith effort to advise all affected parties of the motion and of the time and the date for a hearing." Local Rule 9013-1(a)(1). The movant is required to call and inform the clerk of the urgent filing.

2. United States Bankruptcy Court for the District of Delaware

In Delaware, Local Rule 9006-1(e) specifically states that "[n]o motion will be scheduled on less notice than required by these Local Rules or the Fed. R. Bankr. P. except by order of the Court, on written motion (served on all interested parties) specifying the exigencies

justifying the shortened notice. The Court will rule on such motion promptly without need for a hearing."

Once the Court schedules an emergency or expedited hearing, Local Rule 2002-1(a)(ii) addresses the noticing of such special and/or emergency hearing. That rule provides that in any chapter 11 case, the Court may, *sua sponte* or upon request of a party, schedule a special or emergency hearing date in a case for a specific motion or other issues such as a discovery dispute. The Rule specifies that the party requesting such a special hearing (1) promptly file a notice of hearing on the docket; (2) specify the date and time of the hearing; and, (3) detail the general issue before the court. Moreover, the Rule expressly provides that the court may *sua sponte* schedule a special or emergency hearing.

3. United States Bankruptcy Court for the Southern District of New York

New York has not adopted a specific rule with respect to emergency hearings. However, the jurisdiction embeds the means by which a movant can request an emergency hearing within the corresponding subject matter. For example, Local Rule 4001-2 provides that an emergency request for cash collateral shall describe the amount and purpose of such funds to be used and provide facts that support a finding that immediate or irreparable harm will be caused.

4. United States Bankruptcy Court for the Southern District of Florida

In Florida, emergency hearings are governed by Local Rule 9075-1. The rule requires that a movant include, in the title of the motion or paper, the words "Emergency Hearing Requested." Additionally, the motion or paper requesting an emergency hearing shall set forth with particularity, under a separate heading under the text: (a) the reason for exigency and the date by which the movant reasonably believes the hearing must be held; and, (b) a certification that the proponent has made a *bona fide* effort to resolve the matter without a hearing.

5. United States Bankruptcy Court for the Northern District of Illinois

In Illinois, emergency hearings are governed by Local Rule 9013-2. The rule provides that a motion will be treated as an emergency only if the following criteria are met: (1) the emergency arises from an occurrence that could not reasonably have been foreseen; and, (2) the emergency requires immediate action to avoid serious and irreparable harm. Moreover, a movant must attach to the motion an Application to Set Hearing on Emergency Motion providing the reasons why the underlying motion should be heard on an emergency basis and the proposed time frame for presentment of the motion.

6. United States Bankruptcy Court for the Central District of California

In California, Local Rule 9075-1(a) governs emergency hearings, which are considered motions requiring an order on less than 48 hours' notice. Local Rule 9075-1(b) addresses non-emergency motions to be heard on shorter notice than otherwise required under the rules (a typical motion is heard on 21 days' notice). Theses rule set forth what is required under each circumstance, including when it is appropriate to telephone chambers using the information designated for the corresponding judge in the Appendix. For emergency hearings, a movant must establish the following in order to obtain a hearing on the less than 48 hours'

notice: (a) cause as to why a hearing is needed in 48 hours; and, (b) the reason why the court should set a hearing before the motion is filed and before a declaration[2] has been filed. A request for shortened notice also requires a declaration to support the application that (a) describes the nature of the relief requested in the underlying motion; (b) identifies the parties affected by the relief requested in the motion; (c) states the reasons necessitating a hearing on shortened notice; (d) justifies the setting of a hearing on shortened notice; and, (e) establishes a *prima facie* basis for the granting of the underlying motion. Local Rule 2081-1 specifically incorporates Local Rule 9075-1 regarding first day motions in a typical chapter 11 case.

7. United States Bankruptcy Court for the Northern District of Texas

Texas has not adopted a general rule with respect to emergency hearings. However, Appendix E provides guidelines to obtain an "expedited" or "emergency" hearing during complex Chapter 11 cases. Appendix E defines "expedited" as a matter that should be heard on less than 23 days' notice. An "emergency" matter, on the other hand, is one which should be heard on less than 7 days' notice.

Appendix E states that if a movant has an emergency or other situation which requires less than 23 days' notice, the party should file and serve a separate, written motion for expedited hearing in respect of the underlying motion, and may present the motion for an expedited hearing either (a) *ex parte* at a regular docket call of the presiding judge; or (b) at the next available pre-set hearing date. The court will rule on the motion within 24 hours of the time it is presented. If the motion for expedited hearing is granted, the underlying motion will be set by the courtroom deputy at the next available pre-set hearing date or such other time as approved by the court.

8. United States Bankruptcy Court for the Northern District of Georgia

In Georgia, Local Rule 9013-4 governs emergency hearings. The rule provides that the court may shorten the time for notice and hearing with respect to an emergency matter upon a demonstration of good cause. The motion requesting an expedited hearing must set forth in detail, the necessity for immediate attention, and must also contain the word "emergency" or "expedited." The movant must also advise chambers' staff of the filing of the pleading or motion.

Links to Relevant Local Rules

1. United States Bankruptcy Court for the District of Puerto Rico

- http://www.prd.uscourts.gov/sites/default/files/documents/94/Local_Rules_amended_as_of_Sept_2_2010_with_TOC.pdf

2. United States Bankruptcy Court for the District of Delaware

- http://www.deb.uscourts.gov/sites/default/files/local_rules/2002-1.pdf

3. United States Bankruptcy Court for the Southern District of New York

- http://www.nysb.uscourts.gov/rule-4001-2

[2] This declaration will provide why a hearing is needed on less than 48 hours' notice.

4. **United States Bankruptcy Court for the Southern District of Florida**
   - http://www.flsb.uscourts.gov/?page_id=2305#90192

5. **United States Bankruptcy Court for the Northern District of Illinois**
   - Local Rule 9013-2 http://www.ilnb.uscourts.gov/sites/default/files/local_rules/Local-Rules-4-1-16.pdf

6. **United States Bankruptcy Court for the Central District of California**
   - http://www.cacb.uscourts.gov/sites/cacb/files/documents/local_rules/LBRs%209009-1%20through%209075-1.pdf

7. **United States Bankruptcy Court for the Northern District of Texas**
   - http://www.txs.uscourts.gov/sites/txs/files/appendix_e.pdf

8. **United States Bankruptcy Court for the Northern District of Georgia**
   - http://www.ganb.uscourts.gov/content/blr-9013-4-motions-shorten-time-notice-and-hearing

B. Telephonic Appearances

Brief Analysis

Telephonic appearances have become a mainstay in all of the Jurisdictions. The Jurisdictions universally agree that telephonic appearances are permissible, barring a few exceptions, such as evidentiary hearings, or physical limitations in the courtroom which necessitate the presence of attorneys. Despite this unanimous acceptance, some jurisdictions impose a higher burden to obtain permission from the court for a telephonic appearance. For example, the Delaware allows for telephonic appearances only in extenuating circumstances. Generally in Illinois, a party may not make *substantive* arguments telephonically. However, that is subject to each judge's own discretion.

In jurisdictions like Texas and Georgia, the presiding judge decides whether an attorney may appear telephonically. Each judge lists on his or her webpage the requirements to obtain a telephonic appearance. These procedural requirements are critical because failure to comply with the procedures may result in severe consequences. For example, Puerto Rico, through Local Rule 9074-1(c), explicitly provides that the court may impose sanctions if there is any deviation from the requirements.

Summary of Telephonic Appearances Rules

1. **United States Bankruptcy Court for the District of Puerto Rico**

In Puerto Rico, Local Rule 9074-1 governs telephonic appearances. The rule provides that a movant may request a telephonic appearance no less than three days prior to the

corresponding hearing, unless otherwise authorized by the court. Whether or not a party is allowed to appear by telephone is ordinarily based upon the time and resources of the parties.

2. United States Bankruptcy Court for the District of Delaware

In Delaware, Local Rule 9013-1(i) provides for telephonic appearance at hearings. The rule states that counsel may appear telephonically in extenuating circumstances at a non-evidentiary hearing on a motion. Moreover, the request for a telephonic appearance must be completed by the deadline established pursuant to the judge's chambers' procedures or, if the chamber's procedures contain no such deadline, by no later than 12:00 p.m. prevailing Eastern Time, 24 hours prior to the scheduled hearing date. The rule does not apply to evidentiary hearings.

In addition to Local Rule 9013-1(i), other Local Rules address telephonic hearings in particular circumstances. For example, Local Rule 3007-1(g) provides that any claimant may participate *pro se* and telephonically at a hearing on an Objection to his or her claim. Local Rule 7016-3 provides that any party to a Fed. R. Civ. P. 16 scheduling or pretrial conference may request that the conference be conducted by telephone or that the party be permitted to participate by telephone.

Certain judges' Chambers' procedures also address telephonic appearances. For example, Judge Walrath's procedures state: "Chambers' approval is not necessary for telephonic participation through Courtcall."

The court has arranged for parties to participate by telephonic appearance in hearings using CourtCall, an independent conference call company. The Instructions For Telephonic Appearances Effective January 5, 2005, Revised April 27, 2009, address (i) the policy governing telephonic appearances, including the matters in which telephonic appearances are not permitted; (ii) the scheduling of a telephonic appearance;, and (iii) the associated fees. Delaware counsel must appear in person in all matters before the court.

3. United States Bankruptcy Court for the Southern District of New York

The Local Rules in New York do not explicitly provide for guidelines regarding telephonic appearances. However, each judge will list on his or her own website whether or not telephonic appearances are permissible. Moreover, the website will also list the corresponding procedures, guidelines, and rules to appear by telephone. These rules will vary depending on the individual judge. By way of example,

Judge Morris webpage directs:	Judge Drain's webpage directs:
Unless the Court provides otherwise, parties wishing to participate in a hearing telephonically must register with CourtCall. Attorneys seeking to participate must be admitted to the Court or admitted pro hac vice. (See Local Rule 2090-1). Information on how to register with CourtCall can be found here [http://www.nysb.uscourts.gov/telephonic-appearance-provider] Parties that wish to "listen in" on a hearing are not required to receive consent from Chambers prior to registering with CourtCall, nor to be admitted to the Court or to be admitted pro hac vice. Parties that wish to make a "live" telephonic appearance in order to speak or make argument are required to receive permission from Chambers prior to registering with CourtCall. Such "live" telephonic appearances are normally discouraged where counsel intends to make substantive argument. Parties seeking permission to participate telephonically must call Chambers at least two business days prior to the hearing, and should be prepared to provide the following information: Name of party that the attorney is representing, the motion on which the attorney intends to argue, and the reason that a telephonic appearance is necessary. Once approval is granted, the party must set up the telephonic appearance with CourtCall at least one business day before the hearing is scheduled. Counsel, pro se parties and witnesses are not permitted to participate telephonically for any hearings of an evidentiary nature, including the examination of witnesses or the submission of evidence.	Unless the Court provides otherwise, parties wishing to participate in a hearing telephonically must register with CourtCall. Attorneys seeking to participate must be admitted to the Court or admitted pro hac vice. (See Local Rule 2090-1). Information on how to register with CourtCall can be found here. Parties who wish to "listen in" on a hearing are required to obtain authorization from Chambers prior to registering with CourtCall. Parties who wish to make a "live" telephonic appearance in order to speak or make argument are required to receive permission from Chambers before registering with CourtCall. Parties seeking permission to participate telephonically must email rdd.chambers@nysb.uscourts.gov at least two business days prior to the hearing, and should be prepared to provide the following information: Name of party that the attorney is representing, the motion on which the attorney intends to argue, the reason that a telephonic appearance is necessary, and whether the party intends to submit evidence. Absent extraordinary circumstances, counsel and pro se parties are not permitted to participate telephonically for any hearings of an evidentiary nature, including the examination of witnesses or the submission of evidence.

4. United States Bankruptcy Court for the Southern District of Florida

In Florida, Local Rule 9074-1 governs telephonic appearances. As a preliminary matter, telephonic appearances are only available to parties who are not residents of the county in which the hearing is scheduled, unless the judge directs otherwise. For attorneys, residence means the county in which the appearing attorney's law office is located. In order to request a telephonic appearance, the requesting attorney must contact the judge's calendar clerk at least two business days prior to the hearing. The rule, however, explicitly prohibits telephonic appearances for (1) evidentiary hearings; and (2) matters scheduled on a regular chapter 13 calendar.

5. United States Bankruptcy Court for the Northern District of Illinois

While not explicitly provided for in the Local Rules, Illinois addresses telephonic appearances on its website. The website provides that telephonic appearances cannot be used for hearings that require substantive arguments but does not further define these hearings. Thus, whether telephonic appearances are permitted is subject to each judge's discretion.

6. United States Bankruptcy Court for the Central District of California

Procedures for telephonic appearances in California will depend on each judge and vary greatly. The corresponding judge will list his or her rules regarding telephonic appearances on the corresponding webpage.

7. United States Bankruptcy Court for the Northern District of Texas

The Local Rules for Texas do not expressly provide for a rule that governs telephonic appearances. However, many of the judges have their own policies regarding telephonic hearings. Accordingly, attorneys seeking to appear for hearings telephonically should consult the procedures posted on each judge's webpage. The judges vary in how they implement these procedures. For example, Judge Hale utilizes CourtCall, but Judge Houser typically requires debtor's counsel to distribute a dial-in number for parties to use.

8. United States Bankruptcy Court for the Northern District of Georgia

While not expressly provided for in the Local Rules, a minority of the judges address telephonic appearances on his or her respective webpage. The rules will vary depending on the judge. However, the rules generally prohibit appearance by telephone during the course of an evidentiary hearing. Moreover, these rules also emphasize that lawyers should attempt to limit background noise or any other disturbance that may inhibit an appearance by telephone.

Links to Relevant Local Rules

1. United States Bankruptcy Court for the District of Puerto Rico

- http://www.prb.uscourts.gov/sites/default/files/local_rules/LBR-9074-1.pdf

2. United States Bankruptcy Court for the District of Delaware

- Local Rule 9013-1, 3007-1(g), 7016-3: http://www.deb.uscourts.gov/local-rules-effect-february-1-2017
- Instructions For Telephonic Appearances Effective January 5, 2005, Revised April 27, 2009: http://www.deb.uscourts.gov/sites/default/files/Chambers%20Information/Telephonic_Procedures%5B1%5D.pdf

3. United States Bankruptcy Court for the Southern District of New York

- http://www.nysb.uscourts.gov/judges-info
- http://www.nysb.uscourts.gov/telephonic-appearance-provider

4. United States Bankruptcy Court for the Southern District of Florida

- http://www.flsb.uscourts.gov/?page_id=2305

5. **United States Bankruptcy Court for the Northern District of Illinois**
   - https://www.ilnd.uscourts.gov/judge-cmp-detail.aspx?cmpid=647

6. **United States Bankruptcy Court for the Central District of California**
   - http://www.cacb.uscourts.gov/sites/cacb/files/documents/local_rules/LBRs%209009-1%20through%209075-1.pdf

7. **United States Bankruptcy Court for the Northern District of Texas**
   - http://www.txnb.uscourts.gov/judges-info

8. **United States Bankruptcy Court for the Northern District of Georgia**
   - http://www.ganb.uscourts.gov/judges-information

C. Complex Chapter 11 Cases

Brief Analysis

With the exception of the Northern District of Texas, none of the surveyed Jurisdictions has adopted specific local rules that apply to "complex" chapter 11 cases. While it is true that most bankruptcy courts rarely hear cases that could be described as "complex," many of the jurisdictions do routinely handle large chapter 11 cases. And, surprisingly, the two Jurisdictions that tend to handle the most complex cases, the bankruptcy courts for Delaware and New York, have no specific complex case rules. Perhaps that is because their local rules are structured for complex cases or over time have developed as a result of handling such cases. On the other hand, many of the other Jurisdictions enter orders on a case-by-case basis to address necessary procedures required for complex cases.

Summary of Complex Chapter 11 Cases Rules

1. **United States Bankruptcy Court for the District of Puerto Rico**

   N/A

2. **United States Bankruptcy Court for the District of Delaware**

   N/A

3. **United States Bankruptcy Court for the Southern District of New York**

   N/A

4. **United States Bankruptcy Court for the Southern District of Florida**

   N/A

5. United States Bankruptcy Court for the Northern District of Illinois

Illinois does not have a set of local rules designed to govern large, complex, chapter 11 cases. The Local Rules, however, contain a specific provision that allows for "coordinated proceedings" in complex cases that involve multiple matters which would not be subject to consolidation or joint administration under Local Rule 1015-1. *See* Local Rule 1073-3(C). While that Rule does not mention the specific chapters to which it relates, nor to the debt requirements for a case to be considered "complex," it has been used as authority for the court to enter a specific order in a large, complex chapter 11 case setting forth particular procedures to govern that case.

6. United States Bankruptcy Court for the Central District of California

N/A

7. United States Bankruptcy Court for the Northern District of Texas

In Texas, the Court has adopted Appendix "E" to its Local Rules, which sets forth Procedures for Complex Chapter 11 Cases. Although there are no specific requirements for being deemed a "Complex Chapter 11 Case," the Rule indicates that these are cases which "require[] special scheduling and other procedures because of a combination of the following factors: (a) the size of the case (usually debt of more than $10 million); (b) the large number of parties in the case (usually more than 50 parties in interest in the case); (c) the fact that claims against the debtor and/or equity interests in the debtor are publicly traded (with some creditors possibly being represented by indenture trustees); or (d) any other circumstance justifying complex case treatment."

The Complex Chapter 11 Rules contain various provisions regarding complex chapter 11 cases, including: (a) procedures for obtaining hearings; (b) requirements for the contents of "agendas," which are required to be filed with the Court when five or more matters are set for hearing at the same time; and (c) guidelines for mailing matrices and shortened service lists.

8. United States Bankruptcy Court for the Northern District of Georgia

N/A

Links to Relevant Local Rules

1. United States Bankruptcy Court for the District of Puerto Rico

- N/A

2. United States Bankruptcy Court for the District of Delaware

- N/A

3. United States Bankruptcy Court for the Southern District of New York

- N/A

4. **United States Bankruptcy Court for the Southern District of Florida**
   - N/A

5. **United States Bankruptcy Court for the Northern District of Illinois**
   - Local Rule 1073-3(C) http://www.ilnb.uscourts.gov/sites/default/files/local_rules/Local-Rules-4-1-16.pdf

6. **United States Bankruptcy Court for the Central District of California**
   - N/A

7. **United States Bankruptcy Court for the Northern District of Texas**
   - Appendix E: http://www.txnb.uscourts.gov/sites/txnb/files/local_rules/TXNB_Local_Rules_Revised_12.1.16_0.pdf

8. **United States Bankruptcy Court for the Northern District of Georgia**
   - N/A

D. Fee Application Procedure

Brief Analysis

Bankruptcy courts vary in the degree to which they oversee the filing and approval of fee applications. Some courts – like New York – have very detailed rules regarding fee applications and strictly impose limitations on expense reimbursements. Other courts – like the United States Bankruptcy Court for Georgia – have virtually no guidelines for fee applications, other than in Chapter 13 cases. The remainder of Jurisdictions fall somewhere in the middle and the Local Rules appear to be aimed at ensuring that debtors' attorneys and other estate professionals are being *fairly* compensated. In other words, the fees of bankruptcy attorneys are monitored to ensure that they are fair and reasonable in light of the services provided. Most courts have separate rules to govern fee applications in chapter 13 cases, including the availability of flat fee or "no look" arrangements.

Summary of Fee Application Procedure Rules

1. **United States Bankruptcy Court for the District of Puerto Rico**

In Puerto Rico, Local Rule 2016-1 sets forth guidelines for Application[s] for Compensation of Professionals. As a general matter, the Local Rules require applications for compensation to comply with Bankruptcy Rule 2016, and to contain specific details regarding the professional's request for compensation, including time records for contingent fee matters and expenses. The Local Rule further contains limitations on a professional's reimbursement for certain expenses, including travel time. This Local Rule includes a provision which states that the failure of an attorney to comply with his professional obligations – like appearing at the

§ 341 Meeting and timely filing schedules – may result in a reduction of the attorney's fees for each such occurrence.

Puerto Rico's Local Rule provide a separate section, which sets forth the guidelines for fee applications in Chapter 13 cases.

2. United States Bankruptcy Court for the District of Delaware

In Delaware, fee applications are governed by Local Rule 2016-2. Motion for Compensation and Reimbursement of Expenses. The Local Rule contains detailed guidelines which set forth the scope of the rule, i.e., who needs to file fee applications, the local forms which are required by the court in the fee application, the form, substance and level of detail required for fee applications, and the guidelines and limitations for expense reimbursements. The Local Forms applicable to fee applications are also located on the court's website.

The General Chambers Procedures also address fee applications, including, but not limited to, consideration of applications, interim applications, fee binders, representation at hearings, and the preparation of a chart of fees requested by all court-approved professionals. In addition, there are procedures addressing the appointment of fee auditors in cases with $100 million or more in assets and/or liabilities. Also, certain Judges' Chamber Procedures contain specific provisions regarding fee applications.

3. United States Bankruptcy Court for the Southern District of New York

In New York, fee applications are regulated by Local Rule 2016-1. The Local Rule, however, redirects the reader to a second set of guidelines: The Amended Guidelines for Fees and Disbursements for Professionals in [the] Southern District of New York (the "Amended Guidelines").

The Amended Guidelines contain extremely detailed procedures and requirements for the preparation and submission of fee applications in New York. Pursuant to the Amended Guidelines, fee applications in New York must include specific information regarding the applicant and the status of the case, and the applicant must organize all time and service entries in a manner specified by the Amended Guidelines. The Amended Guidelines also set forth specific factors, which are relevant to the determination of whether certain expenses will be deemed proper by the Court. The Amended Guidelines also address the procedures for requesting a fee enhancement, as well as a request to make portions of fee applications, confidential.

4. United States Bankruptcy Court for the Southern District of Florida

In Florida, fee applications are governed by Local Rule 2016-1: Compensation for Services Rendered and Reimbursement of Expenses. The Local Rule is relatively short, and contains, and refers to separate forms and general guidelines for the submission of fee applications. The Local Rule also contains separate provisions for the compensation of professionals in Chapter 13 cases, interim fee applications in Chapter 11 cases, and the disclosure of compensation by non-lawyer, bankruptcy petition preparers.

5. United States Bankruptcy Court for the Northern District of Illinois

In Illinois, the fee application process is discussed in *two* local rules: (a) Local Rule 5082-1: Applications for Compensation and Reimbursement for Professional Services in Cases Under Chapters 7, 9, 11, and 12; and (b) Local Rule 5082-2: Applications for Compensation and Reimbursement for Professional Services in Cases Under Chapter 13.

Local Rule 5082-1 – which applies to all cases *other* than chapter 13 cases – contains general requirements for fee applications, including guidelines for the content of the narratives contained in the application and for the detailed statement of services required by Federal Rule of Bankruptcy Procedure 2016(a). The Rule also contains a provision that allows the applicant to restrict access to a fee application if it discloses privileged information or attorney work product.

Local Rule 5082-2, on the other hand, applies specifically to chapter 13 cases. The Rule requires applicants to use various local forms in submitting their applications and also contains provisions for the authorization of flat fees. The Rule also contains notice provisions.

6. United States Bankruptcy Court for the Central District of California

In California, fee applications are addressed in L.B.R. 2016-1: Compensation of Professional Persons. The Local Rule is divided between interim fee applications, compensation procedures in chapter 11 cases and final fee applications. The Local Rule also contains a provision, which allows the Court to appoint a fee examiner. The section regarding interim fee applications is the most detailed, and contains guidelines with respect to the form and notice requirements for fee applications; it includes suggested forms and mandatory use of the form order. The Rule also distinguishes between the required form of fee applications in Chapter 7, 11 and all other cases. Some judges have restrictions on reimbursement of expenses.

California has also adopted a separate rule for the fee applications of Chapter 7 Trustees: L.B.R. 2016-2 – Compensation and Trustee Reimbursement Procedures in Chapter 7 Cases.

7. United States Bankruptcy Court for the Northern District of Texas

In Texas, fee applications are addressed in L.B.R. 2016-1: Compensation of Professionals. The rule is extremely brief, and merely addresses the necessity of disclosing compensation, the use of debtor-paid retainer funds and the bare minimum requirements for an application for compensation.

8. United States Bankruptcy Court for the Northern District of Georgia

Georgia has not adopted a Local Rule, which addresses the general issue of fee applications. Instead, the Court has entered a General Order (No. 18-2015) With Regard to Compensation of Attorneys for Debtors in *Chapter* 13 Cases. As evident by its title, the Order only pertains to Chapter 13 cases. As stated in the Order, it "does not establish a particular fee or method of payment for debtor's attorney[s] in Chapter 13 cases. Instead, it establishes appropriate procedures for attorneys for debtors to utilize in charging and collecting fees in Chapter 13 cases."

Links to Relevant Local Rules

1. **United States Bankruptcy Court for the District of Puerto Rico**
   - Local Rule 2016-1:

http://www.prb.uscourts.gov/sites/default/files/local_rules/LBR-2016-1_2.pdf

2. **United States Bankruptcy Court for the District of Delaware**
   - Local Rule 2016-2: http://www.deb.uscourts.gov/local-rules-effect-february-1-2017
   - Local Form 101 and 102: http://www.deb.uscourts.gov/content/local-forms
   - General Chambers Procedures: http://www.deb.uscourts.gov/sites/default/files/General%20Information/generalprocedures%5B1%5D.pdf
   - General Order Re: Fee Examiners In Chapter 11 Cases With Combined Assets And/Or Liabilities In Excess Of $100,000,000 Before Christopher S. Sontchi: http://www.deb.uscourts.gov/sites/default/files/General%20Information/general_procedures%5B1%5D.pdf

3. **United States Bankruptcy Court for the Southern District of New York**
   - Local Rule 2016-1: http://www.nysb.uscourts.gov/rule-2016-1
   - http://www.nysb.uscourts.gov/sites/default/files/2016-1-a-Guidelines.pdf

4. **United States Bankruptcy Court for the Southern District of Florida**
   - Local Rule 2016-1: http://www.flsb.uscourts.gov/?page_id=2305#20161

5. **United States Bankruptcy Court for the Northern District of Illinois**
   - Local Rules 5082-1 and 5082-2: http://www.ilnb.uscourts.gov/sites/default/files/local_rules/Local-Rules-4-1-16.pdf

6. **United States Bankruptcy Court for the Central District of California**
   - L.B.R. 2016-1 and 2016-2 http://www.cacb.uscourts.gov/sites/cacb/files/documents/local_rules/LBRs%202002-1%20through%202091-1.pdf

7. **United States Bankruptcy Court for the Northern District of Texas**
   - L.B.R. 2016-1 http://www.txnb.uscourts.gov/sites/txnb/files/local_rules/TXNB_Local_Rules_Revised_12.1.16_0.pdf

8. **United States Bankruptcy Court for the Northern District of Georgia**
   - http://www.ganb.uscourts.gov/sites/default/files/general-ordes/general_order_18-2015a.pdf

E. Negative Notice / Motions Determined with Notice, But Without a Hearing.

Brief Analysis

Negative notice is a means by which a movant can pursue a legal matter without a corresponding hearing as long as the movant has fulfilled the underlying notice requirements and interested parties have an opportunity to object and request a hearing. All of the Jurisdictions employ negative notice in some form or another; however, the procedure under which the courts use negative notice dramatically differs. Some courts require that the movant provide actual negative notice to the opposing party. For example, California and Florida require that a movant include a preamble in its notice providing that any person who fails to respond to the notice within a certain amount of time shall be deemed to have consented to the entry of an order. Conversely, New York does not require affirmative notice. An opposing party's failure to timely respond within the proscribed deadline and a Certificate of No Objection ("CNO") are sufficient to effectuate negative notice.

The Jurisdictions also differ as to the proper timing. A minority of the Jurisdictions require a grace period prior to effectuating negative notice absent an objection. For example, New York and the Delaware require 48 and 24 hours respectively, to pass after the response deadline before a movant can obtain a CNO and a corresponding order absent a hearing. In comparison, Illinois, where a motion can be initially heard very quickly and no objection/response deadline is provided for, the Court may "Grant Without Hearing" the requested relief upon failure to appear at the initial hearing to contest the matter or ask for time to respond. Similarly, California, Florida, and Puerto Rico require only that the 14-day, 21-day, or 30-day response times, as well as underlying requirements such as additional time of 3 days for mailed notice, be fulfilled prior to obtaining an order absent a hearing.

Because bankruptcy is a collective process whereby a determination or adjudication affects many parties and interests, the type of notice given and received can have a much broader impact on the ensuing proceedings than in other practice areas. See Henry E. Hildebrand, III, Getting Noticed: The New Notice Requirements of Section 342, 13 Am. Bankr. Inst. L. Rev. 533 (2005). Bankruptcy proceedings constantly juggle the interests of the debtor, creditors, and other third parties. This balancing act underscores the tension between negative notice and due process because "[c]onstitutional due process encompasses not only the opportunity to be heard but the opportunity to obtain adequate notice of the contemplated action." Id. Thus, while negative notice is a tool by which bankruptcy courts can streamline the bankruptcy process, minimize costs, and limit the expenditure of judicial resources, the jurisdictional discrepancies establish that the outer limits of negative notice can create constitutional concerns.

Summary of Negative Notice Rules

1. United States Bankruptcy Court for the District of Puerto Rico

While no Local Rule explicitly governs negative notice in the District of Puerto Rico, Local Rule 9013-1 does allow for negative notice in some form. If no objection or other response is filed within the allotted time period, the motion will be granted unless: (1) the

requested relief is forbidden by law; (2) the requested relief is against public policy; or, (3) the interest of justice requires otherwise.

2. United States Bankruptcy Court for the District of Delaware

The term negative notice is not used in the Local Rules for the United States Bankruptcy Court for the District of Delaware. Local Rule 9013-1(j) provides that twenty-four (24) hours after the objection date has passed, counting time in accordance with Fed. R. Bankr. P. 9006(a)(2), with no objection having been filed or served, Delaware Counsel for the movant may file a CNO, substantially in the form of Local Form 107, stating that no objection has been filed or served on the movant. By filing the CNO, Delaware Counsel for the movant represents to the Court that the movant is unaware of any objection to the motion or application and that counsel has reviewed the Court's docket and no objection appears thereon. Upon receipt of the CNO, the Court may enter the order accompanying the motion without further notice or hearing and, once the order is entered, the hearing scheduled on the motion may be canceled without further notice.

The Court-approved form Notice of Motion (Local Form 106) notifies parties in interest of the ramification for not responding to a motion and explicitly states "IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF DEMANDED BY THE MOTION WITHOUT FURTHER NOTICE OR HEARING."

3. United States Bankruptcy Court for the Southern District of New York

While not explicitly stated therein, under Local Rule 9075-2, Certificate of No Objection, New York allows for the granting of motions on negative notice. Forty-eight hours after the expiration of the time to file an objection, a movant may file a certificate of no objection stating that (1) no objection, (2) responsive pleading, or (3) request for a hearing has been filed. Upon filing the certificate of no objection, the court may enter an order absent further notice or hearing.

4. United States Bankruptcy Court for the Southern District of Florida

In Florida, Local Rule 9013-1(D) governs negative notice. The rule provides, in pertinent part, that whenever the Bankruptcy Code or other authority requires that a hearing or notice precedes an order, the provided preamble may be included to indicate negative notice: "Any interested party who fails to file and serve a written response to this motion within 21 days after the date of service stated in this motion shall, pursuant to Local Rule 9013-1(D), be deemed to have consented to the entry of an order in the form attached to this motion. Any scheduled hearing may then be canceled." Local Rule 9013-1. The motion must also include a proposed order as an exhibit. Then, if no objection is received, the movant, within 7 days of the expiration of the 21 day period, must submit a proposed order to the Court, which must include certain language (set forth in the Rule). On the other hand, if an objection is received, the movant must file the Local Form "Certificate of Contested Matter," which will alert the Court to schedule a hearing on the motion.

As a guide, the rule also contains a non-exhaustive list of motions that can be considered on negative notice, including motions to compel abandonment of property, motions to approve compromise or settlement, and motions to approve accounting by prior custodians.

Alternatively, negative notice is not permissible for motions to assume or reject executory contracts, motions to approve employment of professionals, and others. The rule also expressly forbids a movant to use negative notice against a pro se debtor.

5. United States Bankruptcy Court for the Northern District of Illinois

In Illinois, there are no negative notice rules *per se*. However, Local Rule 9013-9 sets forth a procedure wherein the Court may grant motions without a hearing. The procedure has been established for routine motions and uncontested matters. It permits the *Court,* upon proper notice of the motion by the movant, to review and list matters on its call as motions that "Will Be Granted Without a Hearing in the Absence of Objection." If a matter is designated as such by the Court, it will not be called on the hearing date unless an objecting party appears and requests it be called. If no party objects and requests that the motion be called, it will be granted without hearing. This procedure applies only to specific motions as set forth in the Rule, such as motions to extend time for filing complaints, motions to substitute attorneys, and motions to avoid judicial liens.

6. United States Bankruptcy Court for the Central District of California

In California, Local Rule 9013-1 governs negative notice. Rule 9013-1 provides an exhaustive list of motions and matters that may be determined with notice and absent a hearing. This includes, among other things, a motion to convert a case from Chapter 11 to another Chapter under the code, a motion for release of unclaimed funds, a motion for a 2004 examination, and request to enter default. Moreover, if the response period expires absent any reply, objection, or otherwise, a movant must file a Declaration of Service and Non-Response. The form declaration must attach the notice and detail (1) that no timely response and request for hearing was served upon the moving party, and (2) that the declarant has checked the docket and no response and request for hearing was timely filed.

7. United States Bankruptcy Court for the Northern District of Texas

In Texas, Local Rule 9007-1 governs negative notice. The Rule requires that the pleading or notice served must contain a form statement that advises the parties that no hearing will be conducted unless a response is filed with the clerk by a certain date. *See* Local Rule 9007-1(c). The Rule also requires a "certificate of conference" which indicates whether the attorneys conferred and why an agreement could not be reached. If no response and request for hearing is filed by the expiration of the applicable notice period, the moving party must file a certificate with the Court, indicating that no objections have been timely served upon the moving party.

Local Rule 9007-1(h) also contains a list of motions which must be set for hearing. These include motions to extend or impose the automatic stay, motions for substantive consolidation, and motions to extend exclusivity.

8. United States Bankruptcy Court for the Northern District of Georgia

In Georgia, Local Rule 9014-2 addresses the issue of negative notice in Chapter 7 and Chapter 13 cases. As a preliminary matter, the movant must provide notice that complies with Local Form 9014-2 and that contains the information set forth in Local Rule 9014-2(a)(1)-

(9). Then, if the rule requires a response or objection and neither are timely filed, the Court may grant the requested relief or authorize the proposed action without further notice or a hearing. *See* Local Rule 9014-2(b). The rule also contains a list of motions for which these negative notice procedures apply. With respect to service, filing a pleading via ECF and attaching a certificate of service that says other parties will receive ECF notice does not effectuate proper service. Proper service requires sending a copy of the pleading by email.

With respect to cases arising under Chapter 11 and 12, Local Rule 9014-2(f) essentially states that the Court, upon the request of a party in interest or upon its own motion, may determine whether any of the negative notice procedures contained in the rule are applicable.

Links to Relevant Local Rules

1. **United States Bankruptcy Court for the District of Puerto Rico**
   - http://www.prb.uscourts.gov/sites/default/files/local_rules/LBR-9013-1.pdf

2. **United States Bankruptcy Court for the District of Delaware**
   - Local Rule 9013-1: http://www.deb.uscourts.gov/local-rules-effect-february-1-2017
   - Local Form 106: http://www.deb.uscourts.gov/sites/default/files/Forms/localform106.pdf

3. **United States Bankruptcy Court for the Southern District of New York**
   - Local Rule 9075-2: http://www.nysb.uscourts.gov/rule-9075-2

4. **United States Bankruptcy Court for the Southern District of Florida**
   - Local Rule 9013-1: http://www.flsb.uscourts.gov/?page_id=2305#90131

5. **United States Bankruptcy Court for the Northern District of Illinois**
   - Local Rule 9013-9 http://www.ilnb.uscourts.gov/sites/default/files/local_rules/Local-Rules-4-1-16.pdf

6. **United States Bankruptcy Court for the Central District of California**
   - LBR 9013-1(o) http://www.cacb.uscourts.gov/sites/cacb/files/documents/local_rules/LBRs%209009-1%20through%209075-1.pdf

7. **United States Bankruptcy Court for the Northern District of Texas**
   - http://www.txnb.uscourts.gov/sites/txnb/files/local_rules/TXNB_Local_Rules_Revised_12.1.16_0.pdf

8. United States Bankruptcy Court for the Northern District of Georgia

- BLR 9014-2**:** http://www.ganb.uscourts.gov/content/blr-9014-2-when-response-or-objection-motion-or-notice-required

F. Contact with Chambers

Brief Analysis

Private communications between chambers and counsel with respect to ongoing litigation pose significant issues in light of the limitations regarding *ex parte* communication. Many Jurisdictions impose ethical restrictions regarding *ex parte* communication in an effort to minimize unethical conduct. *See* Impartiality and Decorum of the Tribunal, MRPC Rule 3.5 ("A lawyer shall not[] . . . (b) communicate *ex parte* with such a person during the proceeding unless authorized to do so by law or court order."). These limitations raise questions as to whether and to what extent a lawyer can communicate with a judge's chambers. At a minimum, practical considerations necessitate that some communication between chambers and outside counsel is permissible in some circumstances in order to facilitate the bankruptcy process.

Many Jurisdictions allow for limited communication, but vary in terms of with whom and when such communication is appropriate. For example, one judge in Florida[3] does not generally allow *ex parte* communication, but will allow a party to email him or his law clerks in extremely unusual circumstances. In other Jurisdictions like the New York, a lawyer may communicate with the law clerk; however, this communication is still limited by rules governing *ex parte* communication. The New York judges explicitly state that attorneys should limit communication, contacting chambers about only those matters that cannot otherwise be resolved. Some Jurisdictions like Illinois, do not explicitly address the matter but affirmatively list contact information regarding chambers, suggesting that some form of communication may be permitted.

Summary of Contact with Chambers Rules

1. United States Bankruptcy Court for the District of Puerto Rico

The District of Puerto Rico does not explicitly allow for communication, but provides contact information on its website.

2. United States Bankruptcy Court for the District of Delaware

The District of Delaware does not expressly allow communication, but provides contact information for staff and permanent law clerks on its website.

Judge Gross' Chambers Procedures refer counsel to the Principles of Professionalism for Delaware Lawyers which state a lawyer should avoid *ex parte* communication with the Court.

[3] While most of the judges in the Florida do not allow *ex parte* communication, lawyers are allowed to email a courtroom deputy or judicial assistant.

3. United States Bankruptcy Court for the Southern District of New York

Each judge decides the scope of communication.

4. United States Bankruptcy Court for the Southern District of Florida

Each judge decides the scope of communication:

(a) Judge Isicoff:
  (1) No *ex parte* communication;
  (2) May call courtroom deputy.

(b) Judge Cristol:
  (1) No *ex parte* communication.

(c) Judge Mark:
  (1) No communication;
  (2) May call courtroom deputy only if 60 days have elapsed from the later of the close of the briefing schedule or the date the matter was taken under advisement.

(d) Judge Ray:
  (1) Limited communication;
  (2) Only if sixty 60 days have elapsed from the later of the closing of the briefing schedule or the date the matter was taken under advisement.

(e) Judge Olson:
  (1) Limited communication;
  (2) Communication with deputy and judicial assistant is permitted.

(f) Judge Hyman:
  (1) No communication.

(g) Judge Kimball:
  (1) No communication;
  (2) Requires extremely unusual circumstances for communication.

5. United States Bankruptcy Court for the Northern District of Illinois

Illinois does not expressly allow for communication, but provides contact information on its website.

6. United States Bankruptcy Court for the Central District of California

California allows for communication in the event of an emergency motion. Other types of communications with chambers vary with the judge.

7. United States Bankruptcy Court for the Northern District of Texas

Texas does not explicitly allow for communication, but provides contact information.

8. **United States Bankruptcy Court for the Northern District of Georgia**

Each judge decides the scope of communication:

(a) Judge Mullins: Yes, requires that every email sent to chambers be sent to opposing counsel.

(b) Judge Baiser: Yes.

(c) Judge Bonapfel: Requires that every email sent to chambers be sent to opposing counsel.

(d) Judge Diehl: Yes, requires that every email sent to chambers be sent to opposing counsel.

(e) Judge Drake Jr: Does not explicitly allow for communication, but provides contact information.

(f) Judge Ellis-Monro: Yes.

(g) Judge Hagenau: Does not explicitly allow for communication, but provides contact information.

(h) Judge Craig: Does not explicitly allow for communication, but provides contact information.

(i) Judge Sacca: Does not explicitly allow for communication, but provides contact information.

Links to Relevant Local Rules

1. **United States Bankruptcy Court for the District of Puerto Rico**
   - http://www.prb.uscourts.gov/?q=judges-info

2. **United States Bankruptcy Court for the District of Delaware**
   - http://www.deb.uscourts.gov/local-rules-effect-february-1-2017

3. **United States Bankruptcy Court for the Southern District of New York**
   - http://www.nysb.uscourts.gov/judges-info

4. **United States Bankruptcy Court for the Southern District of Florida**
   - http://www.flsb.uscourts.gov

5. **United States Bankruptcy Court for the Northern District of Illinois**
   - http://www.ilnb.uscourts.gov/judges-info

6. **United States Bankruptcy Court for the Central District of California**
   - http://www.cacb.uscourts.gov/judges/judge-directory

7. **United States Bankruptcy Court for the Northern District of Texas**
   - http://www.txnb.uscourts.gov/judges-info

8. United States Bankruptcy Court for the Northern District of Georgia

- http://www.ganb.uscourts.gov/local-rules-and-orders

G. Duty to Confer Before Bringing Motions

Brief Analysis

Whether as a general matter or in specific instances, the Jurisdictions unanimously require that adversaries confer prior to filing for at least certain types of motions or proceedings. This requirement stresses the judiciary's emphasis on efficiency and its desire to streamline the bankruptcy process. Judicial resources should be expended only if necessary. For example, Florida mandates that parties confer prior to filing any motion involving the debtor and requires a certificate of service that the movant's attorney has contacted counsel for all adverse parties to attempt to resolve the matter without a hearing. Many Jurisdictions specifically impose this requirement within the context of discovery. Illinois requires that all motions under Fed. R. Civ. P. 26 through 37 include a statement that (1) a good-faith consultation was attempted, or (2) the failure of the consultation was not the result of the filing attorney. Because bankruptcy is a collective process, two-party disputes will operate as a blockade to the overall success of a case. Thus, the duty to confer is a vital component of bankruptcy.

Summary of Duty to Confer Rules

1. United States Bankruptcy Court for the District of Puerto Rico

In Puerto Rico, Local Rule 4001-1 governs an adversary's duty to confer. The rule provides, in pertinent part, that counsel must confer with respect to the issues raised in the motion in order to determine whether a consent order may be entered.

2. United States Bankruptcy Court for the District of Delaware

In Delaware, the Local Rules contain several provisions requiring counsel's duty to confer. Local Rule 2004-1. Rule 2004 Examinations, requires a conference prior to filing a motion for examination or for production of documents under Fed. R. Bankr. P. 2004. Counsel for the party seeking to examine any entity shall attempt to confer (in person or telephonically) with the proposed examinee or the examinee's counsel to arrange for a mutually agreeable date, time, place and scope of an examination or production. All motions for examination or production under Local Rule 2004 shall include a certification by Delaware Counsel that either (i) a conference was held as required and no agreement was reached, or, (ii) a conference was not held and an explanation as to why no conference was held.

Local Rule 3023-1. Special Procedures in Chapter 13 Matters, addresses Mortgage Claims and Procedures and requires that prior to filing a motion (other than a Motion for Relief from Stay) to enforce any mortgage claim, the notice requirements or plan provisions governing mortgage claims, the moving party shall attempt to confer in good faith with the affected parties in an effort to resolve the dispute without court action. All such motions shall include a certification by Delaware Counsel that a good-faith attempt to confer was so made.

Local Rule 4001-1. Procedure on Request for Relief from the Automatic Stay of 11 U.S.C. § 362(a) requires a movant to confer prior to bringing a motion when requesting relief from the automatic stay under 11 U.S.C. § 362(a). Attorneys are required to confer with respect to issues raised in the motion prior to the corresponding hearing for purposes of determining (1) whether a consensual order may be entered, or, (2) facts that the parties will stipulate.

Local Rule 7016-1. Fed. R. Civ. P. 16 Scheduling Conference, requires all attorneys for all the parties confer at least seven (7) days prior to the Fed. R. Civ. P. 16(b) scheduling conference to discuss: (a) the nature of the case, (b) any special difficulties that counsel foresee in prosecution or defense of the case, (c) the possibility of settlement, (d) any requests for modification of the time for the mandatory disclosure required by Fed. R. Civ. P. 16(b) and 26(f), and (e) the items in Local Rule 7016-1(b).

Local Rule 7016-2(c). Attorney Conference Prior to Pretrial Conference, requires the parties meet and confer in good faith so that the plaintiff may file the pretrial order in conformity with Rule 7016-1.

Local Rule 7026-1. Discovery, provides that parties are expected to confer and in good faith attempt to reach agreement cooperatively on how to conduct discovery under Fed. R. Civ. P. 26-36 and the Local Rules.

Local Rule 7026-3. Discovery of Electronic Documents, states "[i]t is expected that parties to a contested matter or adversary proceeding will cooperatively reach agreement on how to conduct e-discovery." The Local Rule requires, among other things, that the parties discuss the parameters of e-discovery and confer and in good faith attempt to reach agreement as to such e-discovery.

3. United States Bankruptcy Court for the Southern District of New York

In New York, Local Rule 7007-1 expressly requires parties to confer in the context of discovery related motion practice. Unless an affidavit certifying that counsel has conferred with the opposing parties in good faith and attempted to resolve the issues absent judicial intervention, the court will not preside over a matter regarding Rules 7026 through 7037.

4. United States Bankruptcy Court for the Southern District of Florida

In Florida, Local Rule 9073-1 governs the duty to confer before bringing a motion. Parties are required to provide a certification within the certificate of notice that a movant has contacted counsel to resolve the matter absent a hearing.

5. United States Bankruptcy Court for the Northern District of Illinois

In Illinois, Local Rule 7037-1 imposes a duty to confer within the context of discovery motions. Any motion under Fed. R. Civ. P 26 through 37 must include a statement that (1) after an in-person or telephone consultation and good-faith attempts, the parties were unable to reach an accord, or (2) the failure of the consultation was not the movant's fault.

6. United States Bankruptcy Court for the Central District of California

In California, Local Rule 2004-1 creates a duty on the moving party to attempt to confer (in person or telephonically) with the entity to be examined, or its counsel, ans arrange for

a mutually agreeable date, time, place, and scope of an examination or production. Parties are required to participate in a discovery conference in adversary proceedings. They are also required to meet and confer prior to filing any motion relating to discovery and prepare a joint stipulation in the form set forth in Local Bankruptcy Rule 7026-1(c).

7. United States Bankruptcy Court for the Northern District of Texas

In Texas, Local Rule 7007-1 governs the duty to confer. As a general matter, a movant must confer with the affected party in order to determine whether the motion is opposed. Moreover, the movant must attach to its motion a certificate of conference detailing (1) the date of the conference, and, (2) why the agreement could not be reached. This rule only applies in adversary matters; however, Local Rule 9007-1(f) also 4requires certificates of conference in connection with contested matters.

8. United States Bankruptcy Court for the Northern District of Georgia

In Georgia, Local Rule 2004-1 creates a duty to confer, but related only to Rule 2004 examinations. Parties have a duty to confer and make a good faith effort to resolve an issue with respect to an examination under Bankruptcy Rule 2004 or production of documents. The local rules do not otherwise set forth a duty to confer in general

Links to Relevant Local Rules

1. United States Bankruptcy Court for the District of Puerto Rico

- Only required in some instances. For example:
  - Rule 4001-1(h) – Relief from Automatic Stay http://www.prb.uscourts.gov/sites/default/files/local_rules/LBR-4001-1_1.pdf
  - Rule 7016-(d) – Duty to Confer Prior to Evidentiary Hearings http://www.prb.uscourts.gov/sites/default/files/local_rules/LBR-7016-1.pdf

2. United States Bankruptcy Court for the District of Delaware

- Local Rules 2004-1, 3023-1, 4001-1, 7016-1, 7016-2, 7026-1, 7026-3: http://www.deb.uscourts.gov/local-rules-effect-february-1-2017

3. United States Bankruptcy Court for the Southern District of New York

- Local Rule 7007-1 – Applies to Discovery: http://www.nysb.uscourts.gov/rule-7007-1

4. United States Bankruptcy Court for the Southern District of Florida

- Local Rule 7026-1(F) – Applies to Discovery: http://www.flsb.uscourts.gov/?page_id=2305#70261
- District Court – Rule 7.1(a)(3) - http://www.flsd.uscourts.gov/wp-content/uploads/2016/12/December-2016-Local-Rules.pdf

5. **United States Bankruptcy Court for the Northern District of Illinois**
   - Local Rule 7037-1 Applies to Discovery. http://www.ilnb.uscourts.gov/sites/default/files/local_rules/Local-Rules-4-1-16.pdf

6. **United States Bankruptcy Court for the Central District of California**
   - L.B.R. 2004-1 – Applies specifically to requests under FRBP 2004 http://www.cacb.uscourts.gov/sites/cacb/files/documents/local_rules/LBRs%202002-1%20through%202091-1.pdf

7. **United States Bankruptcy Court for the Northern District of Texas**
   - LBR 9013-1; LBR 7007-1(a): http://www.txnb.uscourts.gov/sites/txnb/files/local_rules/TXNB_Local_Rules_Revised_12.1.16_0.pdf

8. **United States Bankruptcy Court for the Northern District of Georgia**
   - http://www.ganb.uscourts.gov/content/blr-2004-1-examinations-pursuant-bankruptcy-rule-2004

H. Procedure for Discovery Disputes

Brief Analysis

Bankruptcy courts unanimously recognize that discovery often slows down litigation and can needlessly exhaust finite resources at the expense of unsecured creditors. These concerns have facilitated the implementation of a variety of mechanisms across the Jurisdictions in an effort to streamline the bankruptcy process and to maximize the estate value. For example, Delaware requires that parties designate a single individual (the "e-discovery liaison") through which all e-discovery requests and responses will be made. That e-discovery liaison must be (1) familiar with the party's electronic systems; (2) knowledgeable about the technical aspects of e-discovery; and, (3) prepared to participate in e-discovery dispute resolutions. New York has opted to reduce affirmative discovery requirements in the context of bankruptcy. Fed. R. Civ. P. 26, as incorporated by Fed. R. Bankr. P. 7026, does not apply to contested matters unless the court directs otherwise. In California, Local Bankruptcy Rule 7026-1 requires compliance with FRBP 7026. Alternatively, Illinois and Georgia prohibit the filing of discovery materials with the clerk unless the discovery is necessary for trial or appeal. In comparison, Delaware requires the filing of discovery material with the clerk if (1) the material is related to a discovery motion; (2) the material is necessary for a pre-trial motion; or (3) a deposition is reasonably expected to be used at trial.

In an effort to establish accountability and limit the expenditure of resources on discovery disputes, the majority of the Jurisdictions encourage opposing parties to resolve their issues outside of the courtroom. Florida requires that prior to filing a motion to compel discovery or a motion for protective order, the movant confer with opposing counsel and file a statement certifying that the movant made a good faith effort to resolve the issues. In fact, the majority of

the Jurisdictions require good-faith certification for nearly all discovery motions. California, Georgia, Illinois, and New York require that all motions filed under Fed. R. Civ. P. 26 through 37 include a statement that: (1) the parties were unable to reach an accord only after good-faith attempts to resolve the issues, and (2) the failure to resolve the issue was not the fault of the movant. Regardless of the breadth of the rules, the procedure creates accountability because the requirement (1) forces the parties to discuss resolving the issue, and (2) develops a record that can later serve as a basis for consequences.

Summary of Procedure for Discovery Rules

1. United States Bankruptcy Court for the District of Puerto Rico

In Puerto Rico, Local Rule 7026-1 governs discovery procedure. If either party fails to perform as required in Fed. R. Civ. P. 26, the aggrieved party must file an affidavit stating the facts which constitute the failure to cooperate. Upon filing of the affidavit, the court may order that the adversary proceeding continue as follows: (1) If the plaintiff is in default, the court may dismiss the matter for want of diligent prosecution. The plaintiff may have the matter reinstated only upon the filing of a motion showing special circumstances within 14 days of the dismissal; (2) If the defendant is in default, the defendant may not be allowed to present its defense at trial except by leave of court.

2. United States Bankruptcy Court for the District of Delaware

In Delaware, Local Rule 7026-1 governs discovery procedure. As a preliminary matter, parties are expected to confer in good faith and attempt to reach an agreement on how to conduct discovery. Parties are also expected to use reasonable, good faith and proportional efforts to preserve, identify and produce relevant information. This may include appropriate limits to discovery, such as limits on custodians, relevant subject matter, time periods, and other parameters.

Prior to serving written discovery, it is expected that the parties will discuss and cooperatively reach agreement on the parameters of their anticipated e-discovery. Unless otherwise agreed, or ordered by the Court, the parties will agree to exchange the following information: (1) a list of the most likely custodians of relevant electronic material; (2) a list of each electronic system that has been in place at all relevant times; (3) the names of the individual responsible for that party's electronic documentation retention policies; (4) the name of the individual who shall serve as the party's e-discovery liaison; and, (5) notice of any problems reasonably anticipated to arise in connection with e-discovery. Moreover, the e-discovery liaison must be (1) familiar with the party's electronic systems; (2) knowledgeable about the technical aspect of e-discovery; and (3) prepared to participate in e-discovery dispute resolutions.

Local Rule 7026-3, regarding e-discovery also addresses such issues as the timing of e-discovery, search methodology, format, retention, privilege and costs. Pursuant to Local Rule 7026-1, any discovery motion filed pursuant to Fed. R. Civ. P. 26 through 37 must include a verbatim recitation of each interrogatory, request, answer, response, or objection which is the subject of the motion or attach a copy of the actual discovery document which is the subject of

the motion. In addition, such motion must be accompanied by an averment of Delaware Counsel for the moving party that a reasonable effort has been made to reach agreement with the opposing party on the matters set forth in the motion or the basis for the moving party not making such an effort. Failure to so aver may result in dismissal of the motion.

3. United States Bankruptcy Court for the Southern District of New York

In the United States Bankruptcy Court for New York, Local Rule 7007-1 governs discovery procedures. Under Rule 7007-1, discovery motions under Bankruptcy Rules 7026 through 7037 will not be heard unless the moving party files with the court, at or prior to the hearing, an affidavit certifying that such counsel has conferred with the opposing counsel in a good-faith effort to resolve by agreement the issues raised by the motion. Moreover, the motions require that the movant request an informal conference with the court.

Order M-289 limits the breadth of Fed. R. Civ. P. 26 in bankruptcy. Subdivisions of Fed. R. Civ. P. 26 as incorporated by Fed. R. Bankr. P 7026 shall not apply in contested matters unless the court directs otherwise including mandatory disclosures, disclosures regarding expert testimony, additional pre-trial disclosure, and 26(f) mandatory meeting before scheduling conference/discovery plan.

4. United States Bankruptcy Court for the Southern District of Florida

In Florida, Local Rule 7026-1 governs discovery procedure. Subsection (A) creates affirmative disclosure requirements providing, in pertinent part, that the provisions of Rules 26(a), (d), and (f), of Fed. R. Civ. P. apply to the proceedings of the bankruptcy court.

Rule 7026-1 also creates limitations regarding the filing of discovery with the court. If depositions, interrogatories, requests for documents, or otherwise are to be used at an evidentiary hearing or any other pre-trial hearing, the appropriate portions shall be filed with the clerk at the outset of the hearing.

Moreover, in order to obtain a motion for protective order, a movant must specifically state the reason for prohibiting, limiting, or rescheduling the deposition or other discovery request, and the deposition or response deadline shall be stayed until the court rules on the motion. Prior to filing the motion for protective order, the attorney for the moving party shall confer with the attorney for the opposing party and shall file with the clerk at the time of the filing of the motion a statement certifying that the movant's attorney has conferred in good faith with the opposing party and attempted to resolve the issue by agreement.

5. United States Bankruptcy Court for the Northern District of Illinois

In Illinois, Local Rule 7026-1 governs discovery procedure. As a general matter, the rule provides that discovery materials are not to be filed with the clerk and the party serving the discovery materials must retain the originals. Moreover, if discovery materials are entered into evidence, the attorney producing them should retain the documents unless the court orders otherwise.

With respect to discovery motions, Local Rule 7037-1 provides that all motions made under Fed .R. Civ. P. 26 through 37 must include the following certification: (1) after consultation in person or by telephone and after good-faith attempts to resolve differences, the parties are unable to reach an accord; or (2) counsel's attempts to engage in such a consultation were unsuccessful due to no fault of the movant.

6. United States Bankruptcy Court for the Central District of California

In California, Local Rule 7026-1 governs discovery procedures. As a preliminary matter, discovery materials are not to be filed with the clerk. Moreover, the party serving discovery must retain the documents and be the corresponding custodian.

With respect to discovery motions, all motions made under Fed. R. Civ. P. 26 through 37 relating to a discovery disputes must include a statement that (1) after consultation and after good-faith attempts to resolve difference, the parties were unable to reach an accord, or (2) counsel's attempt to engage in such consultation were unsuccessful due to no fault of the movant. Parties are also required to prepare a joint stipulation in accordance with Local Bankruptcy Rule 7026-1(c)(3)(A)-(C).

7. United States Bankruptcy Court for the Northern District of Texas

In Texas, Local Rule 7026-1 governs discovery procedure. A motion that relates to a discovery proceeding may only contain the portions of the discovery material in dispute. However, when discovery motions are necessary for consideration of a pre-trial motion, a party shall file only the portion of discovery on which that party relies to support or oppose the motion. Moreover, when a deposition is reasonably expected to be used at trial, it shall be marked for identification as a trial exhibit and exchanged pursuant to the scheduling order.

8. United States Bankruptcy Court for the Northern District of Georgia

In Georgia, Local Rule 7016-1 governs discovery procedure. Within 21 days after the appearance of the first defendant all represented parties are required to confer for the purposes of Fed. R. Civ. P. 26(f) to discuss scheduling matters pursuant to Fed. R. Civ. P. 16(b). All parties are jointly responsible for submitting within 14 days after the conference a written report outlining the discovery plan, and addressing scheduling matters. However, if one or more parties fails to cooperate, an individual report is permitted. In lieu of submitting a report, the parties may provide a written stipulation that the parties have agreed to waive initial disclosures otherwise required by Fed. R. Civ. P. 26(a)(1).

Under Local Rule 7026-3, interrogatories, requests for documents, or otherwise shall be served upon the parties individually, but they shall not be routinely filed with the bankruptcy court. Moreover, the party shall also retain all of the original discovery materials and become its custodian.

Motions to Compel Discovery are governed by Local Rule 7037-1. A movant shall attach to the motion a statement certifying that counsel for the movant has in good faith conferred or attempted to confer with the party not making the disclosure or discovery. The

motion shall also: (1) quote verbatim each interrogatory, requests for admission, etc.; (2) state the specific objection; (3) state the grounds assigned for the objection; and, (4) cite authority and include a discussion of the reasons assigned as supporting the motion. Moreover, a motion to compel discovery must be filed within the later of (1) the close of discovery; or, (2) 14 days after the date for responding to the discovery requests upon which the motion is based, unless the bankruptcy court orders otherwise.

Links to Relevant Local Rules

1. **United States Bankruptcy Court for the District of Puerto Rico**
   - **http://www.prb.uscourts.gov/sites/default/files/local_rules/LBR-7026-1.pdf**

2. **United States Bankruptcy Court for the District of Delaware**
   - Local Rule 7026-1, 7026-3: http://www.deb.uscourts.gov/local-rules-effect-february-1-2017

3. **United States Bankruptcy Court for the Southern District of New York**
   - Local Rule 7007-1: http://www.nysb.uscourts.gov/rule-7007-1

4. **United States Bankruptcy Court for the Southern District of Florida**
   - http://www.flsb.uscourts.gov/?page_id=2305 – 70261
   - District Court – Rule 26.1(g): http://www.flsd.uscourts.gov/wp-content/uploads/2016/12/December-2016-Local-Rules.pdf

5. **United States Bankruptcy Court for the Northern District of Illinois**
   - http://www.ilnb.uscourts.gov/sites/default/files/local_rules/Local-Rules-4-1-16.pdf

6. **United States Bankruptcy Court for the Central District of California**
   - http://www.cacb.uscourts.gov/sites/cacb/files/documents/local_rules/LBRs%207003-1%20through%207069-2.pdf

7. **United States Bankruptcy Court for the Northern District of Texas**
   - Local Rule 7026-1 and 7037-1 http://www.txnb.uscourts.gov/sites/txnb/files/local_rules/TXNB_Local_Rules_Revised_12.1.16_0.pdf

8. **United States Bankruptcy Court for the Northern District of Georgia**
   - http://www.ganb.uscourts.gov/content/blr-7016-1-rule-26f-conference-and-rule-16b-scheduling-order
   - B.L.R. 7037-1**:** http://www.ganb.uscourts.gov/content/blr-7037-1-motions-compel-discovery

I. Response Deadlines to Motions

Brief Analysis

Discrepancies regarding response deadlines to motions can create challenges for out-of-town counsel and inherent advantages and disadvantages in certain Jurisdictions because time is a precious commodity in any litigation process. Texas requires that a response brief to an opposed motion be filed within 24 days from the filing date. This duration is considerably longer than most Jurisdictions and may allow the opposition to prepare a more thorough response. Other Jurisdictions like Georgia require that a party respond 14 days after service, absent an extension. Similarly, Puerto Rico imposes a 14-day deadline, but provides an exhaustive list of matters with different response times such as applications to compromise, notice of intended sale, motion for urgent relief, and motion to dismiss a bankruptcy case. Illinois has no response deadline. Instead, the initial hearing date in this jurisdiction is generally a status or preliminary hearing during which a briefing schedule will be set, if appropriate. California typically requires a response 14 days before the hearing date and a reply 7 days before the hearing date. If the hearing date is continued, the response deadlines will likewise follow absent an order of the Court. Local Bankruptcy Rule 9013-1(m)(4). Certain motions have a modified schedule (e.g. motions for summary judgment). Local Bankruptcy Rule 7056-1(b)(1).

In those Jurisdictions where a response deadline is stated in the rules, some measure the response period from the time of service while others measure the response time from the corresponding hearing date. In other words, service of process is not an absolute point of reference. In New York, if service is made at least 14 days before the return date,[4] any answer papers must be served no later than 7 days before the return date. Likewise, Delaware requires that the deadlines for objections are no later than 7 days prior to a hearing date.

Summary of Response Deadlines to Motions Rules

1. United States Bankruptcy Court for the District of Puerto Rico

In Puerto Rico, Local Rule 9013-1 governs the response time for motions. Within 14 days after service and an additional 3 days pursuant to Fed. R. Bank. P. 9006(f), a party shall serve, file an objection, or any other response with the clerk. If, however, no response or other objection is filed within the time allowed, the paper will be deemed unopposed.

2. United States Bankruptcy Court for the District of Delaware

In Delaware, Local Rule 9006-1 governs response deadlines for motions. Where a motion is served in accordance with Local Rule 9006-1, the deadline for objections shall be no later than 7 days before the hearing date. However, to the extent that a motion is filed and served in accordance with Local Rule 2002-1 at least 21 days prior to the hearing date, the movant may establish an objection deadline that is no earlier than 14 days after the date of service and no later than 7 days before the hearing date. Moreover, any objection deadline may be extended by agreement of the movant; provided, however, that no objection deadline may be extended beyond the deadline for filing the agenda.

[4] "Return date" means the date set for a hearing on a motion or application. NY R USBCTSD LBR 9001-1.

Local Rule 7026-1(b) provides that motions filed under Fed. R. Bankr. P. 7026-7037 shall be filed and served so as to be received at least 7 days before the hearing on the motion. When service is made for a discovery related motion under Local Rule 7026-1, an objection shall be filed and served so as to be received 1 business day before the hearing date.

3. United States Bankruptcy Court for the Southern District of New York

In the United States Bankruptcy Court for New York, Local Rule 9006-1 governs response deadlines. Any answering papers shall be served so as to ensure actual receipt not later than 3 days before the return date. However, with respect to all other motions, any answering papers shall be served so as to ensure actual receipt no later than 7 days before the return date.

4. United States Bankruptcy Court for the Southern District of Florida

In Florida, Local Rule 5005-1(F) governs instructed that submissions "intended for consideration at any hearing already set before the court, shall be filed and served so as to be received by the movant and the court no later than 4:30 p.m. on the second business day prior to the hearing."

Also, Local Rule 9014-1 on contested matters requires that a party to whom a request is directed under Bankruptcy Rule 9014(c) and 7034 must respond in writing within 14 days after being served.

5. United States Bankruptcy Court for the Northern District of Illinois

In Illinois, Local Rule 9013-1 provides for initial service and presentment deadlines for motions; however, the rule does not provide for response deadlines.

6. United States Bankruptcy Court for the Central District of California

In California, Local Rule 9013-1 governs response deadlines. Except as provided for In Local Rule 7056-1 with respect to motions for summary judgment or partial summary adjudication, or otherwise, a written response must be filed and served 14 days before a hearing. A reply is due 7 days before a hearing. If the hearing date is continued, the response deadlines will likewise follow absent an order of the Court.

7. United States Bankruptcy Court for the Northern District of Texas

In Texas, Local Rule 2002-1(a) and (b) specify that certain matters are to be heard on 21 days' notice, and 28 days' notice, respectively. But if the matter is a contested matter and it is not listed in 2002-1(a) or (b), there is no rule, and so the rules of the Federal District Court, which provide that 20 days is the required deadline. Absent negative notice, in a contested matter, responses are filed within 20 days plus 3 days for mailing.

8. United States Bankruptcy Court for the Northern District of Georgia

In Georgia, Local Rule 7007-1 governs response deadlines. A party opposing a motion shall file and serve the party's response, memorandum, or otherwise no later than 14 days after service of the motion, except that the time to respond to a motion for summary judgment shall be 21 days. Failure to file a response shall indicate the motion is unopposed.

Links to Relevant Local Rules

1. **United States Bankruptcy Court for the District of Puerto Rico**
   - Local Rule 9013-1: http://www.prb.uscourts.gov/sites/default/files/local_rules/LBR-9013-1.pdf
   - District Court – Local Rule 7: http://www.prd.uscourts.gov/sites/default/files/documents/94/Local_Rules_amended_as_of_Sept_2_2010_with_TOC.pdf

2. **United States Bankruptcy Court for the District of Delaware**
   - Local Rule 9006-1 and 7026-1: http://www.deb.uscourts.gov/local-rules-effect-february-1-2017

3. **United States Bankruptcy Court for the Southern District of New York**
   - http://www.nysb.uscourts.gov/rule-9006-1

4. **United States Bankruptcy Court for the Southern District of Florida**
   - Local Rule 5005-1: http://www.flsb.uscourts.gov/?page_id=2305#50051

5. **United States Bankruptcy Court for the Northern District of Illinois**
   - Local Rule 9013-1 http://www.ilnb.uscourts.gov/sites/default/files/local_rules/Local-Rules-4-1-16.pdf

6. **United States Bankruptcy Court for the Central District of California**
   - L.B.R. 9013-1(c): http://www.cacb.uscourts.gov/sites/cacb/files/documents/local_rules/LBRs%209009-1%20through%209075-1.pdf

7. **United States Bankruptcy Court for the Northern District of Texas**
   - L.B.R. 9013-1; L.B.R. 7007-1(e); http://www.txnb.uscourts.gov/sites/txnb/files/local_rules/TXNB_Local_Rules_Revised_12.1.16_0.pdf

8. **United States Bankruptcy Court for the Northern District of Georgia**
   - B.L.R. 9013-1; http://www.ganb.uscourts.gov/content/blr-9013-1-motions-and-orders-main-case
   - B.L.R. 7007-1; http://www.ganb.uscourts.gov/content/blr-7007-1-filing-motions-and-responses-adversary-proceedings-hearings

J. Bankruptcy Mediation Rules

Brief Analysis

Of all of the Jurisdictions, Delaware seems to place the strongest emphasis on mediation. Aside from containing the most comprehensive mediation procedures, and having appointed a Mediation Subcommittee for the purpose of providing advice and guidance to the Local Rules Committee on matters related to mediation of adversary proceedings and contested matters, the Delaware Bankruptcy Court is the only court in this analysis that *requires* parties to attend mediation. The Delaware Bankruptcy Court is also the only court in the Jurisdictions that has adopted a special procedure for small-dollar preference claims.

On the other end of the spectrum are (a) Illinois, which does not have any local rules for mediation, other than in trademark cases;[5] and (b) Texas, which does little more than mention the existence and availability of mediation procedures in bankruptcy cases.

The remainder of the Jurisdictions falls somewhere in the middle. They seem to encourage and provide litigants with the necessary tools to engage in mediation, but do not require mediation among the parties. The local rules in most of these jurisdictions also seem to echo a recurring concern: maintaining the confidentiality of the mediation process.

Rule 408 of the Federal Rules of Evidence makes disclosures during settlement negotiations inadmissible "to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction." Fed. R. Evid. 408. Nevertheless, some Circuits have recognized that mediation communications can be disclosed in certain situations. *See, e.g.*, *In re Teligent, Inc.*, 640 F.3d 53, 58 (2d Cir. 2011) (noting that "[a] party seeking disclosure of confidential mediation communications must demonstrate (1) a special need for the confidential material, (2) resulting unfairness from a lack of discovery, and (3) that the need for the evidence outweighs the interest in maintaining confidentiality"). Because confidentiality is a necessary component to a productive mediation, many of the Jurisdictions have adopted rules that specifically mandate the confidentiality of all aspects of the mediation process. Some like Delaware and New York also have local rules that prohibit the mediator from being compelled to disclose any information obtained during mediation. On the other hand, California specifically states that "nothing herein shall require the exclusion of any evidence otherwise discoverable merely because it is presented in the course of a Mediation Conference."

Summary of Bankruptcy Mediation Rules

1. United States Bankruptcy Court for the District of Puerto Rico

Puerto Rico has not adopted a local rule pertaining to mediation. The District Court's Local Rules, however, contain mediation-related rules. Moreover, Local Rule 83J – Court Annexed Mediation – contains a lengthy guideline for mediation. Judges in this District will mediate other Judges' cases upon request of the parties.

As a preliminary matter, Local Rule 83J(b) indicates that "[a]ll civil cases arising under the jurisdiction of this Court are eligible for mediation" and that "[a] case may be selected for mediation (1) By the Court at its discretion; (2) By the Court on the motion of one of the

[5] The N.D. of Ill. does, however, encourage mediation outside of the Court's supervision and certain judges will mediate other judges' cases upon request of the parties.

parties; or (3) By the stipulation of all parties to a case." Accordingly, mediation in Puerto Rico's District Court is not mandatory unless ordered by the Court.

Rule 83J also sets forth other guidelines for mediation including, but not limited to, the qualifications necessary for mediators, the necessary contents of the Court's mediation orders, guidelines for the mediation process itself, the necessity of good-faith participation by the parties and a determination that all mediation proceedings conducted pursuant to the Rule shall remain confidential.

2. United States Bankruptcy Court for the District of Delaware

In Delaware, mediation is governed by Local Rule 9019-5. Pursuant to Local Rule 9019-5, "[e]xcept as may be otherwise ordered by the Court, all adversary proceedings filed in a chapter 11 case and, in all other cases, all adversaries that include a claim for relief to avoid a preferential transfer (11 U.S.C. § 547 and, if applicable, § 550) shall be referred to mandatory mediation." Local Rule 9019-5(a). Additionally, "[u]nless otherwise ordered by the Court, in any adversary proceeding that includes a claim for relief to avoid a preferential transfer (11 U.S.C. § 547 and, if applicable, § 550), the bankruptcy estate (or if there is no bankruptcy estate the plaintiff in the adversary proceeding) shall pay the fees and costs of the mediator." Id.

The Local Rules also contain a specific, alternative, mediation proceeding for preference actions, where the amount in controversy is equal to or less than $75,000. Local Rule 9019-5(j)(i). The plaintiff in such an action is required to serve with the summons a copy of Rule 9019-5(j) and a Certificate in the form of Local Form 118. Then, the defendant has the option of filing the Certificate indicating its intent to opt-into the mediation procedures, in lieu of immediately answering the complaint. This election operates as a referral to mediation for each of the claims in which the defendant is identified as a defendant in the underlying adversary proceeding.

In addition to the above, Local Rule 9019-5 contains guidelines that govern the mediation process, including, but not limited to, the selection of the time and place of mediation, the submission of mediation materials, the parties required to attend the mediation conference, the confidentiality of mediation proceedings, recommendations by the mediator and post-mediation proceedings.

3. United States Bankruptcy Court for the Southern District of New York

In New York, alternative dispute resolution – including mediation – is mentioned in Local Rule 9019-1. However, Local Rule 9019-1 redirects the reader to another set of rules: The Procedures Governing Mediation of Matters and the Use of Early Neutral Evaluation and Mediation/Voluntary Arbitration in Bankruptcy Cases and Adversary Proceedings (the "NY Bankruptcy Mediation Rules"). The link to these procedures is at: http://www.nysb.uscourts.gov/content/mediation-procedures.

Pursuant to the NY Bankruptcy Mediation Rules, mediation is voluntary unless ordered by the Court. The NY Bankruptcy Mediation Rules also contain extensive guidelines for mediation, including, but not limited to, the assignment of matters to mediation, the necessary requirements and qualifications of the proposed mediator, the proposed mediator's compensation, the mediator's immunity from liability for any acts or omissions incident to their service in the mediation and the confidentiality of the mediation.

4. United States Bankruptcy Court for the Southern District of Florida

In Florida, mediation is governed by Local Rule 9019-2. As set forth in the Rule, mediation is voluntary unless ordered by the Court. Moreover, "[t]he court may order the assignment of a matter or proceeding to mediation at a pretrial conference or other hearing, upon the request of any party in interest or the U.S. Trustee, or upon the court's own motion." Local Rule 9019-2(B).

The Rule also sets forth general guidelines for mediation, including the procedures for the registration of mediators with the Clerk of Court, the requirements for the mediation conference, the recommendations of the meditator and post-mediation procedures.

5. United States Bankruptcy Court for the Northern District of Illinois

Illinois recently eliminated its local rules for mediation as obsolete. To date, the Court has not adopted new local mediation rules but does both encourage mediation without court supervision and in some instances offer judge-conducted mediation. The District Court for the Northern District of Illinois does have a mediation rule: LR 16.3 – Voluntary Mediation Program. The rule, however, appears to apply only to cases arising under the Federal Trademark Act of 1946, 15 U.S.C. §§ 1051-1127 (the "Lanham Act"). *See* LR16.3(a).

6. United States Bankruptcy Court for the Central District of California

In California, mediation is encouraged and governed by Appendix III to the Local Rules: Adoption of Mediation Program for Bankruptcy Cases and Adversary Proceedings (Third Amended General Order No. 95-01).

Pursuant to Section 2.0 of Appendix III, "[u]nless otherwise ordered by the judge handling the particular matter (the "Judge"), all controversies arising in an adversary proceeding, contested matter, or other dispute in a bankruptcy case are eligible for referral to the Mediation Program." Mediation, however, is not mandatory. Moreover, pursuant Section 5.2 of Appendix III, "[w]hile participation by the parties in the Mediation Program is generally intended to be voluntary, the Judge, acting sua sponte or on the request of a party, may designate specific Matters for inclusion in the Mediation Program."

The remainder of Appendix III contains a comprehensive guide for mediation in bankruptcy cases, which includes, but is not limited to, the selection of mediators, the method by which matters as are assigned to mediation, confidentiality, mediation procedures, post-mediation procedures and compensation for mediators.

It is noteworthy that the California courts encourage the use of the bankruptcy court's panel mediators. Panel mediators must be selected by a specified judge, complete mediation training and are required to donate 8 hours of mediation services per quarter. Some California judges will serve as settlement officers.

7. United States Bankruptcy Court for the Northern District of Texas

In Texas, the availability of mediation as ADR is recognized in Local Bankruptcy Rule 9019-2(a), which simply states that "[t]he Presiding Judge, either sua sponte or upon the motion of any party or party in interest, may order parties to participate in mediation and may order the parties to bear expenses in such proportion as the Presiding Judge finds appropriate."

There are no other rules governing mediation in Texas' Bankruptcy Court. However, Local Rule 9019-2(b) authorizes the Judge to submit a case to other methods of alternative dispute resolution. Moreover, "[u]pon motion and agreement of the parties, the Presiding Judge may submit a case or proceeding to binding arbitration, early neutral evaluation or mini-trial." L.B.R. 9019-2(b). Most mediations in the Northern District of Texas are at the behest of the parties.

8. United States Bankruptcy Court for the Northern District of Georgia

Georgia has not adopted a local rule for mediation. Mediation, however, is encouraged, and the Court has published a document called "Mediation Procedures," which "sets forth general guidelines for parties to follow when they have agreed to the mediation of disputes in a matter pending in Georgia: *See*, http://www.ganb.uscourts.gov/sites/default/files/Mediation_Procedures_NDGA.pdf. The guidelines however, do not address when the parties have not agreed to mediation.

Nevertheless, in the District Court, litigants to civil disputes are required to consider the use of an alternative dispute resolution ("ADR") process (including mediation) at the "Early Planning Conference," pursuant to Local Rule 16.7(D). Local Rule 16.7 also contains a short guideline of the procedures for all ADR conferences, as well as specifically mediations.

Links to Relevant Local Rules

1. United States Bankruptcy Court for the District of Puerto Rico

- District Court Local Rule 83J: http://www.prd.uscourts.gov/sites/default/files/documents/94/Local_Rules_amended_as_of_Sept_2_2010_with_TOC.pdf

2. United States Bankruptcy Court for the District of Delaware

- Local Rule 9019-5: http://www.deb.uscourts.gov/sites/default/files/forms/Rule%20901 9-5%20Mediation.pdf
- Local Form 118: http://www.deb.uscourts.gov/sites/default/files/forms/LocalForm118.pdf

3. United States Bankruptcy Court for the Southern District of New York

- http://www.nysb.uscourts.gov/rule-9019-1

4. United States Bankruptcy Court for the Southern District of Florida

- Local Rule 9019-2: http://www.flsb.uscourts.gov/?page_id=2305#90192

5. United States Bankruptcy Court for the Northern District of Illinois

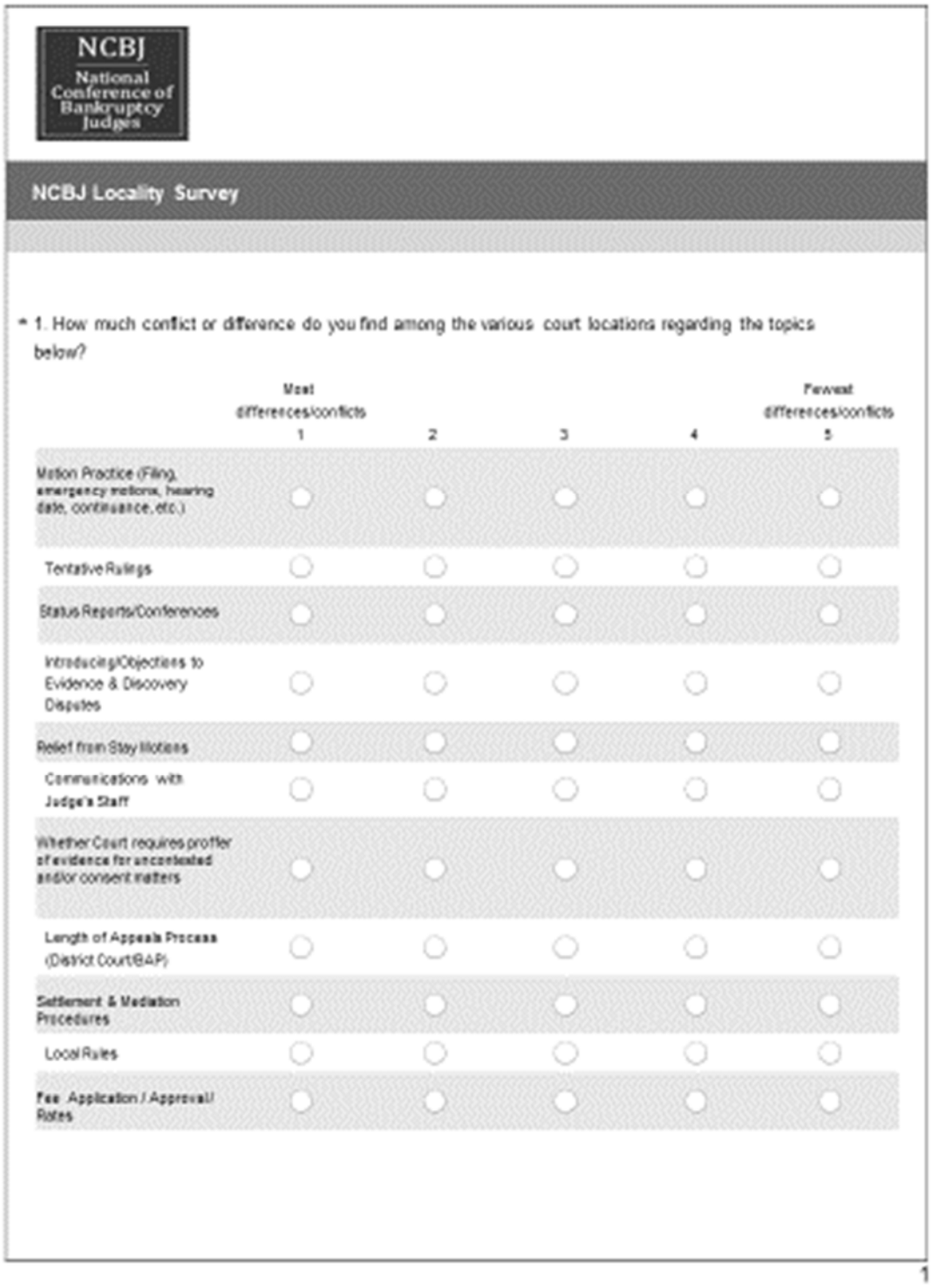
- District Court Local Rule 16.3 http://www.ilnd.uscourts.gov/_assets/_documents/_rules/LRRULES.pdf

6. **United States Bankruptcy Court for the Central District of California**
   - Appendix III: http://www.cacb.uscourts.gov/sites/cacb/files/documents/local_rules/Local%20Bankruptcy%20Rules_COMPLETE2017.pdf

7. **United States Bankruptcy Court for the Northern District of Texas**
   - L.B.R. 9019-2: http://www.txnb.uscourts.gov/sites/txnb/files/local_rules/TXNB_Local_Rules_Revised_12.1.16_0.pdf

8. **United States Bankruptcy Court for the Northern District of Georgia**
   - District Court Local Rule 16.7: http://www.gand.uscourts.gov/sites/default/files/NDGARulesCV.pdf

ADDENDUM I



NCBJ
National Conference of Bankruptcy Judges

NCBJ Locality Survey

* 1. How much conflict or difference do you find among the various court locations regarding the topics below?

	Most differences/conflicts 1	2	3	4	Fewest differences/conflicts 5
Motion Practice (Filing, emergency motions, hearing date, continuance, etc.)					
Tentative Rulings					
Status Reports/Conferences					
Introducing/Objections to Evidence & Discovery Disputes					
Relief from Stay Motions					
Communications with Judge's Staff					
Whether Court requires proffer of evidence for uncontested and/or consent matters					
Length of Appeals Process (District Court/BAP)					
Settlement & Mediation Procedures					
Local Rules					
Fee Application / Approval Rates					

1

2. Describe one (1) other practice area/issue in which you find significant conflicts/differences among court locations.

3. Does the difference in locality on the topics below affect your decision making and approach to the case?

	Biggest Impact 1	2	3	4	Least Impact 5
Motion Practice (Filing, emergency motions, hearing dates, continuance, etc.)	○	○	○	○	○
Tentative Rulings	○	○	○	○	○
Status Reports/ Conferences	○	○	○	○	○
Introducing/Objections to Evidence & Discovery Disputes	○	○	○	○	○
Relief from Stay Motions	○	○	○	○	○
Communications with Judge's Staff	○	○	○	○	○
Whether Court requires proffer of evidence for uncontested and/or consent matters	○	○	○	○	○
Length of Appeals Process (District Court/BAP)	○	○	○	○	○
Settlement & Mediation Procedures	○	○	○	○	○
Local Rules	○	○	○	○	○
Fee Applications/Approval/Rates	○	○	○	○	○
Practice Area/Issue Identified in Question 2 above	○	○	○	○	○

2

4. Do you believe that the differences in locality on the topics below affect the venue choice?

	Always	Usually	Occasionally	Seldom	Almost Never
Motion Practice (Filing, emergency motions, hearing dates, continuance, etc.)	○	○	○	○	○
Tentative Rulings	○	○	○	○	○
Status Reports/ Conferences	○	○	○	○	○
Introducing/Objections to Evidence & Discovery Disputes	○	○	○	○	○
Relief from Stay Motions	○	○	○	○	○
Communications with Judge's Staff	○	○	○	○	○
Whether Court requires proffer of evidence for uncontested and/or consent matters	○	○	○	○	○
Length of Appeals Process (District Court/BAP)	○	○	○	○	○
Settlement & Mediation Procedures	○	○	○	○	○
Local Rules	○	○	○	○	○
Fee Applications/Approval Rates	○	○	○	○	○
Practice Area/Issue Identified in Question 2 above	○	○	○	○	○

* 5. *May* we contact you for follow up discussion on your response to the survey?

○ Yes

○ No

If yes, please provide best contact info here.

3

NCBJ
National Conference of Bankruptcy Judges

NCBJ Locality Survey

Please tell us about yourself:

*6. In what Circuit do you practice?

- 1st Circuit
- 2nd Circuit
- 3rd Circuit
- 4th Circuit
- 5th Circuit
- 6th Circuit
- 7th Circuit
- 8th Circuit
- 9th Circuit
- 10th Circuit
- 11th Circuit
- DC Circuit

*7. How big is your firm?

- Sole Practice
- 50 or fewer Professionals
- 51 to 250 Professionals
- 251 to 1,000 Professionals
- More than 1,000 Professionals

*8. What is the primary nature of your practice?

- Business
- Consumer

*9. I primarily represent:

- Debtor(s)
- Secured Creditor(s)
- Creditor's Committee
- Individual Creditors
- Fiduciaries

5

ADDENDUM II

Question 2: Describe one (1) other practice area/issue in which you find significant conflicts/differences among court locations.

Comment Provided	Motion Practice	Tentative Rulings	Status Report/Conferences	Evidence/Discovery Disputes	Relief from Stay Motions	Comm. with Judges Staff	Evid. - Uncontested/Consent	Length of Appeals Process	Settlement/Mediation Proc.	Local Rules	Fee Applic./Approval/Rates	Other
▪ Local rules fixing bar dates in chapter 11 cases in violation of Fed. R. Bankr. P. 3003(c)(3), which requires the judge ("Court" means judge -- see Rule 9001) before whom the case is pending to fix the bar date.										X		
▪ Motion practice. Emergency settings.	X											
▪ Requirements for local counsel.										X		
▪ Time to Render Decisions		X										
▪ disclosure statement hearings										X		
▪ tentative ruling		X										
▪ Admission pro hac vice										X		
▪ Familiarity with chapter 15												X
▪ Telephonic appearances, i.e. allowance or procedures related thereto										X		
▪ Whether evidence will be taken/required at the first hearing on a motion.	X											
▪ Different notice periods for different types of	X											

motions/objections (e.g. objection to exemptions)												
▪ first day motions	X											
▪ Many bankruptcy judges in California use "alternate direct testimony," in which a witness offers a declaration in lieu of direct testimony, subject to cross-examination. Virtually every judge handles this differently. E.g., one judge will not hear objections to testimony not raised in writing before trial, while another refuses to consider written objections, preferring that they be raised at trial. Most judges use the declaration in place of direct testimony in its entirety, but some use it only for foundational facts and expect direct testimony on the main issues. At least one judge does the opposite, allowing counsel to "warm up" the witness by asking a few foundational questions, without getting into substance, and then turn the witness over for cross-examination.				X								
▪ Service/Notice										X		
▪ Nomenclature, Kentucky court will use different language in its rulings												X
▪ General civil litigation												X
▪ The length of time required for noticing normal motions and the ability to use negative notice procedures.	X											
▪ Courts vary in how they allow Certificates of No										X		

Objection prior to entry of an order without a hearing on uncontested matters, such as interim fee applications, abandonment of de minimus property, etc...												
▪ Ability to execute quick sales	X											
▪ Notice by e-mail versus mail - Typically found in Local Rule 5005										X		
▪ Length of time for decisions after contested motions and trials.												X
▪ Setting hearings and shortening time.	X											
▪ Dip Financing/Cash collateral												X
▪ telephonic participation in court proceedings -- access, procedures, restrictions on type of participation										X		
▪ I have appeared in many different jurisdictions over my time. I find the process for obtaining hearing dates, noticing and response times for motion practice to vary widely.	X											
▪ Confirmation pre hearing procedures.										X		
▪ digital recording of hearings posted on PACER & willingness to let journalists/other non-lawyers listen to hearings via telephone										X		
▪ Deadlines and Response times	X											
▪ Manner of making telephonic appearances.										X		
▪ I don't know any courts that do the tentative rulings		X										

other than California courts.												
▪ Chapter 13 practice and procedures												X
▪ Avoiding hearings by utilizing notices of presentment and certificates of no objection										X		
▪ Enforcement of filing and service deadlines.										X		
▪ Procedures for obtaining orders on uncontested applications/motions.										X		
▪ How evidence is handled, live witnesses or declarations or what				X								
▪ Procedures for 2004 examinations.										X		
▪ scope of the UST involvement in the case												X
▪ Judge's specific guidelines												X
▪ Response deadlines (if any) to motions.	X											
▪ 363 sale procedures; break-up fees, auction terms												X
▪ Some courts require that I file a motion to continue a hearing, even if opposing counsel consents. Most courts will process the continuance with either a telephonic or e-mail announcement. Many courts allow for telephonic appearance at hearings, but a recently appointed judge has done away with this convenience even though this was the custom for over a decade. I even have to appear to announce a consent order. So now I either must pay local counsel to make the announcement for me, or										X		

drive four hours and stay overnight in a hotel to make the announcement myself. I am admitted to practice in 7 states and I routinely practice bankruptcy in 4 states, and for the most part, being able to practice in multiple jurisdictions is fairly efficient thanks to technology. But there are differences, including the process for obtaining approval of a post-petition loan modification.												
▪ One court sets confirmation hearing upon the filing of the plan, the other court doesn't set the confirmation hearing until the 341 hearing is concluded.										X		
▪ Requirements of verifications/affidavits for routine matters which are/should be implicit in counsel's signing the submissions										X		
▪ The use of telephonic hearings.										X		
▪ Whether the Court holds chambers conference or telephonic conferences to resolve issues like discovery and scheduling disputes, on letter briefs. The other big issue is substantive law differences, i.e. 9th circuit on Catapult or other big issues.										X		
▪ Pro hac vice rules; do you need local counsel present; and how to appear by telephone.										X		

▪ Local rules and notice practices (e.g. Arizona negative notice and Nevada regular notice).										X		
▪ Introducing/Objections to Evidence & Discovery Disputes-- This topic should not be combined. In my experience most courts are reasonably consistent on evidentiary matters. However, All Courts differ wildly on how they handle discovery disputes. Some Judges get angry with lawyers for not being able to resolve discovery disputes which gives the party resisting discovery a huge tactical advantage because they know there is practically no enforcement mechanism. On the other hand, some Judges crush parties who have legitimate resistance to discovery like a steamroller. This varies from Judge to Judge more than from locality to locality.				X								
▪ Chapter 13 practice--form of plan, level of deference to trustee, standards for plan confirmation, and procedures												X
▪ organizing creditors' committees by phone												X
▪ Extent of unsolicited premature substantive comments from the bench		X										
▪ Continuances of Hearings												X
▪ What is equitably moot. Protection of consumers and priority claimants. Tolerance for selling out fiduciary representation,												X

especially by committee counsel.												
▪ Procedures in the scheduling of hearings.										X		
▪ Telephonic appearances										X		
▪ Allowance and extent of telephonic participation in hearings.										X		
▪ chambers copies of pleadings												
▪ Tentative rulings and timing of those rulings		X										
▪ Requirement to retain local counsel.										X		
▪ The degree to which evidentiary proof (supporting affidavits and documents) must be submitted with the filing of an initial motion. West coast seems to require a ridiculous amount of proof with the submission of a motion. What ever happened to notice pleading?				X								
▪ DIP Financing and Cash Collateral Orders												X
▪ Pretrial hearings										X		
▪ 341 meeting procedures vary widely. So Dist CA has the worst and most wasteful set of requirements.										X		
▪ In the Middle District of Florida, Bankruptcy practice has been made remarkably more uniform by two successive chief bankruptcy judges, 'Judges Karen Jenneman of Orlando and Michael Williamson in Tampa. I believe we are now nearly uniform throughout the sprawling the middle												X

District of Florida as a result of their concerted efforts. You should contact either of them to learn how they did it. In years past the individual procedures of bankruptcy judges, especially in Miami, were a challenge.												
▪ Style - does court come prepared such that argument is unnecessary and presentation is responding solely to well thought-out tentative, or does everyone repeat pleadings as though nobody has ever heard of Section 363.												X
▪ Processing Claims is the issue for me that cries the loudest for uniformity. We live in a global society and to burden national and international creditors with a multitude of rules seems unreasonable.										X		
▪ Predictability. The ability to tell the client and out of state counsel how the court will address matters. Not substantively, but procedurally. I.e., timing, receptiveness.										X		
▪ Some court's local rules don't specify when objections to motions are due.										X		
▪ Approach to handling Reaffirmation Agreements.												X