

Judge Creswell's Chambers Procedures

Updated 11/16/2023

I. Courtroom Etiquette/Expectations

○ Settlements & Agreed Continuances

- i. All announcements regarding settlements (even if orders are already submitted) and agreed continuances should be sent no later than 12:00 PM the business day prior to the hearing to settlements4C@almb.uscourts.gov. **Please copy opposing counsel and the trustee but do not copy Ms. Moore or Chambers.** The Court still encourages settlements; however, any settlement not communicated through the above email address prior to the 12:00 PM deadline will need to be put on record at the hearing. If the non-moving party has no defense such that an order can be submitted, please send those updates to the settlement email prior to the deadline copying opposing counsel and Trustee.

○ Confirmation Hearings

- i. Confirmation hearings are scheduled to begin at 10:00AM. Debtor attorneys should meet with the Chapter 13 Trustee in the courtroom one hour prior to the confirmation hearing to resolve any outstanding issues. This allows Trustee to determine which cases are ready to be confirmed during the "Confirmation Call," but this does not negate Debtor attorneys' obligations under Administrative Order 2018-18. *See V. Filing Deadlines.*

○ Telephonic Hearings

i. **Please remember to do the following:**

- mute your phone while you are waiting on the conference call;
- choose a quiet place where you can be heard clearly and background noise won't interfere with the proceedings;
- announce your appearance when your case is called;
- let your client know before the hearing whether he or she needs to participate in the telephonic hearing;
- remember that a telephonic hearing is treated the same as any other hearing - be punctual and treat it the same way you would if you were in the courtroom;
- advise the judge if at any time during the hearing you cannot hear what is being said by the judge or the other parties;
- devote your full attention to the call to avoid mistakes and misunderstandings; and
- be familiar with the court's procedure to reconnect if you are disconnected during a hearing.

ii. **Please do not:**

- put your phone on hold;
- call in while operating a vehicle;
- participate by speaker phone unless it is absolutely necessary; or
- be distracted with other tasks and matters.

○ Evidentiary Hearings

- i. Parties should come to an evidentiary hearing prepared.
- ii. All relevant documents should be exchanged between the parties prior to the hearing.
- iii. Exhibits should be submitted electronically and in accordance with Administrative Order 2020-14: "Attorney Evidence Procedures for Trials and Evidentiary Hearings."

II. Suggestions of Death or Incompetency

- i. When filing a Suggestion of Death or Incompetency on behalf of a debtor, the appropriate local form should be used. The Suggestion of Death or Incompetency form can be found at: <https://www.almb.uscourts.gov/local-forms>.

III. Motions to Extend or Impose the Automatic Stay

- ii. All motions to extend or impose the automatic stay should have an affidavit filed as a separate attachment in the same docket entry. An affidavit allows the Court to easily assess whether the movant has set forth evidence in support of the motion. If an affidavit is not filed properly or is not filed at all, the debtor should be available during the telephone hearing to provide testimony. Otherwise, the motion may be denied.
- iii. Affidavits filed in support of these motions should be sufficient to meet the burden set forth in 11 U.S.C. § 362(c)(3)(C) and 11 U.S.C. § 362(c)(4)(D) unless the debtor will be present at the hearing to testify. The Court is not required to look beyond the four corners of the pleadings and affidavits as it is the debtor's burden to prove good faith by clear and convincing evidence. The Court considers these motions and affidavits on a case-by-case basis. At a minimum, affidavits supporting the motions should explain why the most recently dismissed case(s) failed and whether there has been a change of circumstances that will improve the debtor's prospects in the pending case.

IV. Motions for Relief

- i. All motions for relief filed should have supporting documents (i.e. affidavits, exhibits, etc.) filed as separate attachments in the same docket entry. Movant should attach an Affidavit and a Fact Summary Sheet to the motion for relief. This allows the Court to easily assess whether the movant has set forth evidence in support of the motion. A form Fact Summary Sheet can be found at: <https://www.almb.uscourts.gov/local-forms>.
- ii. A motion for relief must be accompanied by a properly filed affidavit in order to be scheduled for a telephonic hearing. If the affidavit and supporting documents are not filed separately or they are not filed at all, the matter will be put on the contested matter docket to allow the movant to present evidence on the record.
- iii. Any affidavit submitted should be sufficient to meet the movant's burden under §362(d)(1)-(4) and under §362(g) unless the witness will be present at the hearing to testify.
- iv. Movant should include the specific amount of attorney fees requested in the motion.

V. Filing Deadlines

- i. For confirmation hearings in all Chapter 13 cases, please review Administrative Order 2018-18: "Amended Order Governing Procedures in Cases Under Chapter 13". All filings (i.e. amendments to plans or schedules, responses, objections, etc.) shall be made no later than 5:00 PM on the fourth full business day prior to the day such case will be called, not counting the day of the hearing.
- ii. The Court is generally prepared for the docket 3 business days prior to the scheduled hearing. For matters not subject to Administrative Order 2018-18, please notify chambers by e-mail at almb4C@almb.uscourts.gov when a document pertinent to the hearing is filed within 3 days of the hearing.

VI. Submitting Orders

i. Generally:

- Orders should be submitted on CM/ECF, not via e-mail.
- The proposed order must comply with ALMB's e-orders guidelines and formatting requirements.
- The title of an order should include the disposition and reference the related motion. Examples include: "Order Granting Motion to Sell"; "Order Conditionally Denying Relief from Stay"; "Agreed Order on Motion to Determine Mortgage Fees and Expenses"
 - A resubmit request will be issued for orders received with only "Order" as the title.
- While parties may include stipulated facts, orders should not contain "Findings of Fact" or "Conclusions of Law."
- If the order is being submitted following a hearing, the order should be uploaded within 14 days of the hearing.

ii. Requirements for Orders Conditionally Denying Relief from Stay in Chapter 13 cases:

- Unless otherwise ordered by the Court, an agreed order in a Chapter 13 case conditionally denying a motion for relief from stay (or conditionally extending or imposing the automatic stay) with a future relief provision is subject to the requirements set out below:
 - a) The future relief provision must expire no later than twenty-four (24) months after entry of the conditional denial order;
 - b) Termination of the stay cannot be based upon the number of default notices.
 - c) The order shall provide that the creditor must mail any notice of default to a debtor with at least twenty-one (21) days' notice to cure and file it with the Court within one (1) business day of mailing. The order shall further provide that, if the stay terminates pursuant to the terms of the conditional denial order, the creditor must file a notice of termination of stay with the Court and mail a copy to the debtor, and that the stay termination is not effective until the notices described in this paragraph are filed with the Court. The notice of termination of stay filed with the Court on CM/ECF shall relate such notice to the conditional denial order and notice of default. The notice filings required by this paragraph are for information only and will not be set for hearing.
 - d) The conditional denial order must not contain a provision that the order should be binding upon the Chapter 7 Trustee in the event of conversion.
 - e) The conditional denial order must not contain an open-ended provision for future attorney's fees or costs in addition to the fees and costs specifically authorized in the order.
 - f) The creditor must file an amended or supplemental proof of claim for any post-petition arrearage or attorney's fees authorized by the conditional denial order to be paid by the Chapter 13 Trustee. Any such proof of claim must be filed within sixty (60) days of the conditional denial order's entry. A creditor filing a proof of claim under this subsection is not required to file the notice of fees, expenses, and charges under FED. R. BANKR. P. 3002.1(c).
 - g) If the denial is conditioned upon current payments being made directly to the creditor, the order must state the date of the month when payments are due. The cure period after notice of default must be at least twenty-one (21) days from the date of mailing.

- h) If the denial is conditioned upon plan payments being made to the Chapter 13 Trustee, the order must not provide that the debtor is in default prior to the end of the month in which the plan payment is due. The cure period after notice of default must be at least twenty-one (21) days from the date of mailing. The Chapter 13 Trustee's records shall control as to the date payment was received.