

CHAMBERS GUIDELINES
Hon. John E. Waites, Judge
United States Bankruptcy Court

| Chambers Contact Information | |
|---------------------------------------|---|
| Telephone Numbers | 843-727-4112 (Charleston) 803-253-3751 (Columbia) |
| Fax Numbers | 843-727-4720 (Charleston) 803-253-3464 (Columbia) |
| Chambers Staff | <u>Law Clerks:</u> Andrew Powell (Andrew.Powell@scb.uscourts.gov) Sarah Kistler (Part-time) (Sarah.Kistler@scb.uscourts.gov) <u>Judicial Assistant:</u> Agnes Babb (Part-time) (Agnes.Babb@scb.uscourts.gov) |
| Courtroom Deputy | Nicole Stalvey (Nicole.Stalvey@scb.uscourts.gov) |
| Preferred Communication Method | For hearing related matters, e-mail judgewaites_hearings@scb.uscourts.gov . For all other matters, e-mail law clerks directly. |

Proposed Orders: File on CM/ECF unless otherwise advised. All proposed orders should include a cover page¹ and must clearly set forth the grounds and contain findings that justify the entry of the order. A proposed order should not merely refer to or approve the application/motion. Orders due after court hearings should be filed within 10 days of the hearing.

Statement of Dispute:

- **For chapter 13 plan objections:** File on CM/ECF on **the earlier of** 30 days after the objection is filed or 10:00 a.m. two business days before the date of the confirmation hearing, unless otherwise directed by the Court.²
- **For all other matters:** File on CM/ECF no later than 10:00 a.m. two business days before the hearing unless otherwise directed by the Court.

Deadline to request continuance or notify Court of settlement or withdrawal in order to remove a matter from the hearing calendar: 10:00 a.m. two business days before the hearing.

Self-Scheduled Hearings: To determine if a matter should be self-scheduled, consult lists provided in SC LBR 9013-4 and the Court Calendar available [here](#).

To determine whether a Chapter 13 matter is to be scheduled on the Chapter 13 docket or the 362 13 docket, please consult LIST OF MATTERS FOR SCHEDULING IN CHAPTER 13 CASES (JUDGE WAITES CASES ONLY) set forth in [Exhibit A](#). **Matters which are incorrectly scheduled may be stricken, determined, rescheduled or continued without notice as necessary by the Court or in the interests of justice.**

¹ The cover page expedites the signing of the large volume of orders received by the Judge.

² Objections to confirmation involving disputes in value may be referred to mediation, in which case, the deadline for submitting a (Joint) Statement of Dispute will be listed in the Order Appointing Mediator.

INDEX

Continuances, Settlements, & Withdrawals.....[3](#)

Statement of Dispute.....[4](#)

Chapter 13 Procedures.....[5](#)

Stay Relief Procedures.....[10](#)

Motions to Substitute Collateral/Use Insurance Proceeds.....[12](#)

Exhibits in Adversaries and Contested Matters.....[13](#)

Adversary Proceedings.....[14](#)

Requests for Emergency Relief.....[16](#)

Telephone/Videoconference Participation in Hearings.....[17](#)

Judicial Lien Avoidance Instructions.....[18](#)

Student Loan Debt Procedures.....[19](#)

Loss Mitigation/Mortgage Modification.....[20](#)

CONTINUANCES, SETTLEMENTS, & WITHDRAWALS

This section applies to all matters on the Judge's docket, with the exception of adversary proceedings, which are governed by separate sections below. **In order to be timely considered by the Judge, requests for continuances, notifications of settlement, or withdrawals must be filed on CM/ECF by no later than 10:00 a.m. two business days prior to the date of the hearing.**¹ **Absent removal of the matter from the court calendar, all counsel and parties shall attend.**

I. Continuances

Continuances may be timely requested using the *Request for Continuance* text event on CM/ECF (if all responding parties consent) or by filing a motion for continuance along with a separate calendar removal request (if unable to obtain consents of all responding parties). Prior to making a continuance request in chapter 13 matters, the chapter 13 trustee should be consulted.² Parties are required to fill out all fields in the CM/ECF text event, and the failure to do so may result in the Court not granting the relief requested.

Continuances are not effective until granted by court order.³

II. Settlements

The settlement of a matter scheduled for hearing should be promptly reported to chambers using the *Notification of Settlement and Request for Removal from Court Hearing Calendar* text event on CM/ECF; or where applicable, by filing a notice and application for settlement pursuant to Fed. R. Bankr. P. 4001(d) or 9019, and a calendar removal request.

III. Withdrawals

Withdrawals of any filing upon which a hearing has been set should be filed on CM/ECF using the *Withdrawal from the Court Calendar* text event. When prompted by the text event, the party filing the withdrawal must specify the reason for withdrawal, including, but not limited to, the debtor's agreement to file an amended plan or the parties' agreement to enter into a consent order or take other action. Parties are required to fill out all fields in the CM/ECF text event, and the failure to do so may result in the Court requiring the parties to withdraw the matter at hearing.

¹ Extraordinary circumstances such as illness or family emergency will also be considered to obtain a continuance after the deadline. To make a late request due to extraordinary circumstances, counsel should both file the request on CM/ECF and email the request to Chambers.

² For some matters relating to confirmation, the matter will not be removed from the calendar in advance, but the Trustee may announce the continuance on the record during the hearing.

³ With regard to motions to dismiss or convert pursuant to 11 U.S.C. § 1112, a request for a continuance by the movant or consent to a continuance by the movant shall be deemed a waiver of the scheduling and ruling deadlines imposed by 11 U.S.C. § 1112(b)(3) and the rules.

STATEMENT OF DISPUTE

If a matter set for hearing is contested, the parties should complete and file a Joint Statement of Dispute by the applicable deadline, using the form attached as [Exhibit B](#).¹ If the pleadings on which the hearing is based clearly set forth all issues to be decided by the Court and the statutory, case law or other applicable authority, the parties may simply reference the pleadings in those sections of the Joint Statement of Dispute and complete the other sections.

Parties and counsel submitting a Joint Statement of Dispute **may not reserve** the right to materially alter or supplement the Joint Statement of Dispute and shall be bound to the position and disclosures provided therein. Issues and arguments not stated in the Joint Statement of Dispute (even if previously stated in pleadings) may be considered by the Court to be abandoned or waived by the respective party. The parties shall be presumed ready for a hearing upon reasonable notice at any time after the submission of the Statement of Dispute. Representations made in a Joint Statement of Dispute shall be considered binding on the parties. A reference to the proposed submission of evidence and the availability of witnesses to be called by a party may be relied upon by the opposing party. Counsel shall be prepared to discuss the Joint Statement and the affected proceeding with the Court at any time after its submission.

If parties cannot agree to a Joint Statement of Dispute, separate Statements shall be submitted to the Court, using the form attached as [Exhibit C](#), under the same requirements and conditions applicable to Joint Statements of Dispute, along with an explanation of reasons the statement could be submitted jointly. The Statements shall be filed by the same deadline required for a Joint Statement and shall be served upon opposing counsel by e-mail or hand delivery.

The failure by any party/counsel to timely submit a Joint or Separate Statement of Dispute which is complete and submitted in good faith, or to timely and fully consult with the Trustee or opposing party/counsel, or to be reasonably available for discussion with or hearing by the Court may be deemed by the Court to be a failure of that party to prosecute and may result in the dismissal or denial of the party's position, pleading, or plan of reorganization and may result in other sanctions pursuant to Bankruptcy Rule 9011, 11 U.S.C. § 105, 28 U.S.C. § 1927, or the inherent authority of the Court.

If a matter is settled after the filing of a Joint or Separate Statement of Dispute, counsel should advise chambers immediately by e-mail to judgewaites_hearings@scb.uscourts.gov with copy to all participating counsel.

For chapter 13 plan objections, the deadline to submit proposed Joint or Separate Statement of Dispute is the earlier of 30 days after the filing of the objection or 10:00 a.m. two (2) business day before the hearing.²

For all other matters, the deadline to submit the proposed Joint or Separate Statement of Dispute is 10:00 a.m. two (2) business days before the hearing.

¹ **The form used by the Judge differs from the form provided in the Local Rules.**

² Objections to confirmation involving disputes in value may be referred to mediation, in which case, the deadline for submitting a (Joint) Statement of Dispute will be listed in the Order Appointing Mediator.

CHAPTER 13 PROCEDURES

The following procedures³ for chapter 13 matters apply to cases assigned to the Judge.⁴

I. Deadline to Object to Confirmation

Pursuant to Operating Order 18-04, for cases assigned to Judge Waites, the deadline to object to the confirmation of a chapter 13 plan is no later than 21 days after the date of service of the plan as computed under Fed. R. Bankr. P. 9006(a). Debtors shall use the form notices provided in Operating Order 18-04 when serving an original or modified chapter 13 plan.

II. Conduit Procedure

Judge Waites has signed Operating Order 18-03 (CONDUIT MORTGAGE PAYMENTS IN CASES ASSIGNED TO JUDGE WAITES AND JUDGE DUNCAN), which adopts a conduit procedure in chapter 13 cases assigned to him. Debtor shall comply with the requirements of Operating Order 18-03.

III. Duty to Consult

In order to comply with Bankruptcy Rule 9014(e), the Trustee, parties, and counsel who have a chapter 13 matter scheduled for hearing before the Court shall have a duty to timely consult with each other regarding the matter and discuss settlement possibilities or stipulations.

IV. Chapter 13 Calendar

The calendar for hearing chapter 13 case matters before the Judge are generally divided into contested and uncontested matters.

A. UNCONTESTED MATTERS

- 1. General Procedures & Role of the Trustee.** Generally, for uncontested or otherwise resolved matters, the matter may be addressed in court by the Trustee. Prior to the chapter 13 calendar, in a matter regarding confirmation, the Trustee shall provide notice of deficiencies in a debtor's plan of reorganization (the "Plan").⁵ In conducting the uncontested matters, the Trustee shall address each scheduled matter and report the Trustee's recommendations to the Court. In doing so, the Trustee may discuss Plan deficiencies and objections by parties in interest, examine debtors or other witnesses, identify other information needed for case administration, and report

³ These procedures **do not** govern the hearing of motions for relief from the automatic stay.

⁴ The goal of these procedures is to reduce unnecessary attendance and wait time at hearings for the bar and parties, allow compliance with Fed. R. Bankr. P. 9014(e), provide parties with further opportunity to settle matters or prepare arguments, and assist the Judge in preparing for significant issues not highlighted by the pleadings through research and review.

⁵ Trustees typically provide written notice of deficiencies in a debtor's plan of reorganization at a debtor's 11 U.S.C. § 341 meeting of creditors or several days in advance of the hearing on confirmation of a debtor's plan of reorganization.

settled and disputed matters. Counsel or parties may also make statements on the record. The Court or Trustee may announce further hearing dates and times for continued matters or matters deemed in dispute. If a new hearing date is announced without objection, all counsel and parties will be presumed to agree to the date and time and no later conflicts will be accepted. Settlements, Trustee recommendations, and other agreed upon dispositions shall be recorded and considered by the Judge.

2. Attendance. For uncontested or resolved matters, **it is the responsibility of debtor(s), objecting parties, and counsel to inquire with the Trustee as to the need for attendance.**⁶ However, **the Judge requires attendance by debtor(s) and counsel** in the following circumstances:

- a. If debtor(s) file an amended plan, amended schedules or statements, or a claims objection within 3 business days prior to a confirmation hearing, which materially affects the confirmation hearing, unless the filing or amended document resolves all objections and the Trustee has affirmatively excused the attendance.
- b. A case in which the Trustee has provided notice that a request to dismiss the case will be made at the confirmation hearing.

If counsel has informed the Trustee of a resolution of a matter and the Trustee has agreed, the Trustee may report a resolution on the record and excuse counsel's attendance. The failure to attend by counsel or parties when not otherwise excused shall be reported to the Court by the Trustee and may be deemed a failure to prosecute.

B. CONTESTED MATTERS

1. General Procedures in Contested Matters. Parties and counsel should be fully prepared to proceed with a dispositive hearing on contested matters unless the matter is removed by the Court upon a continuance, report of settlement, or withdrawal as stated below or unless counsel are otherwise advised by the Court. Prior to the hearing on the contested matter, parties and counsel shall have the duty to:

- a. to consult and define the issues to be decided by the Court;
- b. disclose the witnesses to be called at the hearing;
- c. exchange any evidence to be presented to the Court two business days before the hearing;
- d. enter into stipulations that may assist the Court at the hearing; and
- e. estimate the time needed for hearing.⁷

⁶ To assist the bar, Trustees may develop, implement, and publish standard rules and procedures governing attendance by debtors at uncontested hearings.

⁷ **For matters expected to take more than 1 hour, counsel should promptly advise chambers by e-mail to eliminate unnecessary wait time.**

2. **Filing of a (Joint) Statement of Dispute.** For all contested matters, parties shall file a Joint Statement of Dispute or Separate Statements of Dispute (if a joint statement is not agreed upon), in conformance with [Exhibits B & C](#), no later than 10:00 AM two business days before the originally scheduled hearing on the chapter 13 calendar, unless otherwise directed by the Court.
3. **Attendance.** Counsel, necessary witnesses, and parties are expected to appear for a matter originally scheduled on the calendar, unless the matter is removed from the calendar pursuant to the procedures set forth below.
4. **Calendar Removal.** For guidelines regarding reporting settlements, filing withdrawals, or requesting continuances of disputed matters for purposes of calendar removal, see the [Continuances, Settlements, & Withdrawals](#) section.

V. Requirement for Confirmation

As a condition to confirmation of a chapter 13 plan, the debtor(s) shall represent by filing a Debtor's Statement in Support of Confirmation via the Plan (by the addition of nonconforming language) or via CM/ECF, which indicates that they understand the following:

- (1) The obligations set forth in the plan, including the amount, method, and timing of payments made to the Trustee or directly to creditors;
- (2) The consequences of any default under the Plan; and
- (3) That debtor(s) may not agree to sell or sell property, employ professionals, incur debt (including modification of debt), or request or agree to mortgage modification or other loss mitigation during the pendency of the case without the advance authorization of the Bankruptcy Court.

The Trustee shall not recommend confirmation without ensuring that such Statement has been either included in the Plan or filed on CM/ECF.

VI. Expedited Fee Amount (No-Look Fee)

The expedited fee ("no-look fee") amount for purposes of SC LBR 2016-1(b)(1) is \$4,000 for a consumer case and \$4,500 for a business case. To the extent that funds are available after deduction of the Trustee's commission and the Chapter 13 plan provides for such treatment, the Chapter 13 Trustee shall disburse up to \$1,500 of the expedited fee to debtor's counsel in the Trustee's Initial Disbursement under the Chapter 13 plan.

Upon request by counsel on the record at the hearing, an additional no-look fee of \$500 or more may be allowed for representation of a debtor in a contested confirmation hearing in which a joint statement of

dispute is filed and contested testimony and/or evidence is offered at the hearing.⁸ A fee order will be issued at the conclusion of the hearing upon the request of counsel.

In extraordinary circumstances where counsel anticipates significant work necessary for the case and a written fee agreement has been entered with the debtor, counsel may present a **Certification and Presumptive Fee Request** which seeks a higher presumptive fee. **The Certification must be presented within fourteen days of the filing of the petition and contain a summary of facts demonstrating cause for a higher fee.** Prior to or with the filing, the Certification shall be presented to the Chapter 13 Trustee for the Trustee's consideration of consent. The Certification and Presumptive Fee Request may be used to obtain approval of attorney's fees without the filing of a formal fee application and hearing. An order allowing a higher presumptive fee may be entered on an *ex parte* basis. Counsel should utilize the CM/ECF event "Certification and Presumptive Fee Request" when filing the Certification. A copy of the standard certification is available in [Exhibit D](#).

CAP: In all instances, attorney's fees for services provided to a debtor in a chapter 13 case through and up to confirmation of the plan shall be capped at \$5,400, unless otherwise authorized by court order.

VII. Supplemental Fees

Attorneys should use the procedure for applications for supplemental fees set forth in SC LBR 2016-1(b)(2)(A). The procedure in SC LBR 2016-1(b)(2)(B) is no longer necessary.

VIII. Payments to the Trustee under the Chapter 13 Plan

- A. Pre-Confirmation Payments.** Prior to confirmation, a debtor shall make their payments to the Trustee directly and timely (11 U.S.C. § 1326(a)). Unless good cause is shown to the Court by the debtor, the Trustee shall not recommend confirmation of chapter 13 plan unless the debtor is current on their pre-confirmation payments.
- B. Post-Confirmation Payments.** Unless otherwise exempted, **no later than 14 days after the date of filing a petition** under chapter 13 or the date of conversion to chapter 13 (if applicable), debtor shall submit to the Trustee the form included as [Exhibit E](#), which indicates the debtor's agreement to make the post-confirmation payments to the Trustee through a wage order pursuant to 11 U.S.C. § 1325(c) or alternatively agree to establish and use a Trustee-approved electronic account deduction program,⁹ commencing with the payment due in the month that debtor(s)' plan is confirmed.

⁸ The applicant may qualify for the additional fee if a matter is settled on the eve of a hearing after incurring substantial preparation and efforts.

⁹ TFS Bill Pay (<http://www.tfsbillpay.com>), a third party payment method specializing in payments to trustees under chapter 13 plans.

Debtor may be exempted from this requirement if:

- (1) The debtor is not currently employed;
- (2) The debtor does not receive payments that are amendable to a wage order;
- (3) The debtor's employer has less than 20 employees;
- (4) The debtor is self-employed; or
- (5) Other good cause is shown in writing submitted to the Trustee by the 14 day deadline.

Every instance of exemption shall be presented by the Trustee to the Court for review as a condition of confirmation.

Upon the failure to timely comply with the requirements of Section VIII, the debtor and debtor's counsel shall appear before the Court at the first available confirmation hearing date to show cause for the failure to comply.

IX. Valuation Dispute Mediation Program

Mediation may be ordered in cases involving valuation of secured claims on real estate and large value personal property, such as manufactured homes, tractor trailers or RVs (but excluding automobiles). By court order, a mediator is selected and appointed to perform up to 2 hours of service in preparing for and conducting the mediation sessions. The mediator is compensated by a fee of \$500, to be equally divided between the debtor(s) and creditor.

- A. Duty of Counsel.** Upon the filing of an objection involving the valuation of a secured claim on real estate or large value personal property, the objecting party and the debtor shall immediately notify Chambers of the valuation dispute by an email to judgewaites_porders@scb.uscourts.gov with a copy to the Chapter 13 Trustee and opposing counsel. **Failure to timely advise chambers may result in the overruling of the objection or dismissal of request to value collateral or sanctions.**
- B. Exemption.** Parties may request an exemption from mediation under the Valuation Dispute Mediation Program upon the filing a separate correspondence requesting the exemption and detailing the cause for the exemption.

X. Disclosure of Domestic Support Obligations and Student Loan Disputes

In an effort to facilitate communication and settlement of contested issues in Chapter 13 cases and in order to reduce costs of contested hearings, counsel for the debtor and objecting party are under the duty to notify Chambers and the Chapter 13 Trustee immediately upon the filing of an objection/response to a plan or other contested matter involving issues related to Domestic Support Obligations and/or Student Loan Debt.

STAY RELIEF PROCEDURES

I. Standard Form Orders Regarding Motions for Relief from the Automatic Stay in Chapter 13 Cases

Due to the large volume of settlement orders and other § 362 orders reviewed in chambers, standard form orders have been developed to increase efficiency in the review and processing of these orders. The use of the following form orders relating to motions for relief from the automatic stay will allow for expedited consideration without a hearing:

A. Settlement Orders for Motions for Relief.¹⁰

1. Ongoing payments and cure payments made directly to creditor (no equity): See [Exhibit J](#).
2. Ongoing payments and cure payments made directly to creditor (equity): See [Exhibit K](#).
3. Parties pursuing LM/MM review: See [Exhibit L](#).
4. Insurance Coverage: See [Exhibit M](#).

B. Orders Granting Relief.

1. Order granting relief from stay in Chapter 13 case based upon a failure to object to motion for relief from stay. See [Exhibit G](#). This order may also be generated using the CM/ECF text only event “Certification of No Response and Request for Default 362 Order.”
2. Order granting relief from stay in Chapter 13 case based upon failure to comply with settlement order. See [Exhibit H](#). For circumstances in which the failure to comply is based on the failure to make payments under the settlement to the creditor, this order may be generated using the CM/ECF event “Affidavit of Default and Request for Order Granting Relief.”
3. Consent order granting relief from the automatic stay to continue or pursue an action in family court. See [Exhibit I](#).

C. Standard Cure Periods.

For expedited consideration without a hearing, parties should schedule the cure payments in a settlement order for a Motion for Relief under the following uniform standards:

| <u>Number of Missed Post-Petition Payments</u> | <u>Length of Cure Period</u> |
|---|--|
| 0-6 Months | 12 month cure |
| 7-12 Months | 24 month cure |
| More than 12 Months | To be determined at a hearing before the Court |

II. Settlement Orders Containing Non-Standard Language (Hearing Required).

Parties may include non-standard language in form Settlement Orders in the section provided or they may draft a settlement order containing non-standard language. **Unless otherwise advised, a**

¹⁰ These orders may also be generated using the CM/ECF text only event “Request for Settlement Order on Motion for Relief from Stay (Judge Waites).”

hearing, attended by counsel for all parties to the settlement, will be required for approval of any non-standard form order or a settlement order containing non-standard language.

III. *Ex parte* Relief Due to Default on Settlement Order.

For settlement orders that include an *ex parte* relief provision based on the failure to make payments directly to the creditor, an affidavit of default should state that the default occurred within the effective time period for the *ex parte* relief provision included in the settlement order (e.g., within 12 months after the expiration of the cure period) and **indicate with specificity the payments** which have not been received since the entry of the settlement order. The affidavit must also include an attachment which demonstrates all direct payments made after the entry of the settlement order and their application.

IV. Motions to Extend the Automatic Stay

For all motions to extend the automatic stay filed in cases before the Judge, an affidavit of the movant shall be filed supporting such motion, which provides the information necessary to determine whether the requirements of 11 U.S.C. § 362(c)(3) are met. The affidavit must be filed at the same time as the motion to extend the automatic stay. The chapter 13 plan and all schedules must be filed by no later than five (5) business days prior to the scheduled hearing on the motion to extend the automatic stay. The failure to file the chapter 13 plan and all schedules and statements in time for the Trustee's consideration may result in the denial of the motion. The motion may be granted in advance of the hearing if the affidavit is timely submitted, there are no objections by parties in interest, and the Trustee consents to the extension.

MOTIONS TO SUBSTITUTE COLLATERAL/USE INSURANCE PROCEEDS

Motions to substitute collateral or use insurance proceeds to purchase a vehicle of equal or greater value may be filed on passive notice and scheduled for a possible hearing on the consent calendar. Proposed orders granting motions to substitute collateral should be filed using the form attached as [Exhibit F](#).

EXHIBITS IN CONTESTED MATTERS

The original and two (2) bench copies of all paper exhibits and an itemized list of the exhibits are to be submitted to the courtroom deputy two days prior to the hearing and are not to be filed on CM/ECF.¹⁶ In addition, counsel shall ensure that there are enough copies of the exhibits for all opposing counsel, *pro se* parties, and any witness providing testimony regarding the exhibits. To avoid confusion, the exhibits of the party initiating the matter should be premarked using letters (e.g., Movant's or Plaintiff's Exhibit A, B, C, etc.), and the responding party's exhibits should be premarked using numbers (e.g., Respondent's or Defendant's Exhibit 1, 2, 3, etc.).¹⁷ The parties shall exchange exhibits and confer **prior** to the hearing to determine whether they will be able to stipulate to the admission of exhibits set forth in the Statement of Dispute or Joint Pretrial Order. Court will not start until all exhibits are correctly submitted to the Courtroom Deputy. If a matter is scheduled to be heard by video or telephone conference, the premarked exhibits shall be provided to the courtroom deputy three (3) business days prior to the scheduled hearing by email to judgewaites_hearings@scb.uscourts.gov, or by delivery to the applicable Court location via U.S. Mail, FedEx/UPS, or hand delivery.

Electronic Evidence:¹⁸ Counsel shall contact the courtroom deputy no later than five business days prior to the hearing/trial to make arrangements for the electronic evidence and to ensure compatibility of your electronic devices with the Court's equipment. If electronic presentation of evidence is to be used, three paper copies need to be submitted. Unless otherwise addressed in the scheduling or pretrial order, parties shall provide opposing counsel with a copy of the electronic evidence to be presented at hearing/trial (if a copy is not possible, counsel should provide a specific description of the evidence) no later than five business days prior to the date of the hearing/trial.

¹⁶ Exhibits in Adversaries are to be submitted with the Joint Pretrial Order in accordance with the terms of the Judge's Scheduling Order.

¹⁷ For example, for a hearing on an objection to confirmation, the party objecting to confirmation will premark the exhibits by letters, while the Debtor's exhibits will be premarked with numbers.

¹⁸ The guidelines on Electronic Evidence applies to both Contested Matters and Adversary Proceedings.

ADVERSARY PROCEEDINGS

I. Scheduling Orders

Once the issues are joined or upon order of the Court, counsel are notified by chambers to meet the requirements of Fed. R. Civ. P. 26(f) within 14 days and are requested to e-mail a Discovery Report to the law clerks to advise the Court of the time necessary for discovery. Scheduling orders are thereafter entered pursuant to Fed. R. Civ. P. 16(b). In its discretion or if requested by the parties, the Court may conduct an initial pretrial or status conference.

II. Modification of Scheduling Orders

If the parties wish to alter a deadline in a scheduling order and it does not require the rescheduling of a hearing before the Court, the request should be made to chambers and should indicate the proposed change and whether all parties agree to the modification. If the proposed amendment would necessitate rescheduling a matter already noticed for hearing, including the final pretrial hearing, or trial, the parties must file a motion seeking an amended scheduling order and indicate the reasons for amendment, whether all parties consent, and the status of discovery efforts. **An agreement to modify a deadline or a request to so modify is not effective absent entry of an amended scheduling order by the Court. Any modified scheduling order prepared by counsel should follow exactly the language of the original scheduling order without change, deletion or addition other than the proposed extended deadline unless otherwise approved by the Court in an actual hearing.**

III. Consent to Entry of Final Orders and Judgments

Any party objecting to the entry of final orders or judgments by this Court on any issue in the adversary proceeding, whether or not designated as “core” under 28 U.S.C. § 157(b), shall file a motion by the deadline specified in the scheduling order requesting that this Court determine whether the proceeding is subject to the entry of final orders or judgments by this Court. **FAILURE OF ANY PARTY TO FILE A MOTION ON OR BEFORE THE DEADLINE PROVIDED IN THE SCHEDULING ORDER SHALL CONSTITUTE FINAL AND BINDING CONSENT BY SUCH PARTY TO THIS COURT ENTERING FINAL ORDERS AND JUDGMENTS IN THE PROCEEDING.**

IV. Availability of Court During Depositions

Absent advance notification, the Judge is usually not available to address discovery issues arising during a deposition. If parties anticipate the need for the Court’s involvement, the issues should be raised in advance by motion or joint request.

V. Continuances

Continuances for hearings and trials in adversary proceedings may be requested **only** by the filing of a motion for continuance along with a calendar removal request. The motion should clearly indicate the reason for the continuance, whether the other parties consent to the continuance, and the time needed

before the next hearing. **Hearings and trials in adversary proceedings may not be continued merely through the submission of a consent order of continuance or through use of the CM/ECF “Request for Continuance” event.**

VI. Settlements

Settlements of adversary proceedings may be reported by filing a consent order, by filing a notice and application for settlement, if required under the Bankruptcy Rules, or through use of the “Notice of Settlement and Request for Removal from Court Hearing Calendar” text event on CM/ECF. **The consent order must clearly indicate whether it resolves all issues in the adversary proceeding in order for the matter to be removed from the calendar.** Counsel are also encouraged to promptly report settlements of adversary proceedings to chambers by e-mail to judgewaites_hearings@scb.uscourts.gov. To ensure removal from the calendar or to excuse counsel and parties from attendance, settlements must be reported **no later than two business days before the hearing or trial.**

The terms of any settlement resulting in the filing of a Stipulation of Dismissal must be provided to chambers for *in camera* review if any consideration is exchanged in return for the dismissal. In Chapter 13 cases, notice of any such settlement must be provided to the Chapter 13 Trustee so that the Trustee can advise chambers whether he/she consents to the settlement.

VII. Joint Pretrial Orders

Pretrial orders, the requirements of which are detailed in prior scheduling orders issued in the proceeding, are to be submitted timely on CM/ECF. The parties need not agree on every matter contained therein in order to submit the order as joint. If there is disagreement on a matter, the joint pretrial order may reflect the disagreement. The original and one copy of all paper exhibits as well as an itemized list of exhibits shall be submitted to the courtroom deputy at the same time as the Joint Pretrial Order.

REQUESTS FOR EMERGENCY RELIEF
(Supplement to Local Rule 9075-1)

Motions for Expedited Hearings or for Shortened Notice. Motions for expedited or emergency hearings or to shorten notice are to be filed in accordance with SC LBR 9075-1. Upon the failure to indicate how quickly the matter needs to be heard, the Court may set the matter for a hearing within approximately 20 days from the date of the filing of the motion. **Hearings set on less than 10 days notice will require service of motion/pleading and notice of hearing on all parties entitled to notice by expedited means (facsimile, e-mail, overnight mail or hand delivery).**

TELEPHONE/VIDEO CONFERENCE PARTICIPATION IN HEARINGS

Requests to Participate by Telephone or Videoconference. The Court will consider written requests by counsel to participate by telephone or videoconference capabilities in hearings or trials in which counsel can demonstrate that travel or attendance creates an unnecessary expense or burden and that opposing counsel is informed of the request and does not object to the appearance by telephone. All such requests must be made in writing to chambers and the courtroom deputy (Nicole Stalvey) as soon as possible and **no later than three business days before the date of the hearing or trial.** Counsel should indicate in their written request the extent of their participation (e.g., mere listening, argument, questioning of witnesses or presenting evidence). The presentation or viewing of evidence by non-attending counsel will require prior coordination with the courtroom deputy. Counsel should not rely on requests for such participation unless and until approved by the Court. Participation by these means may be limited based on the technological capabilities of the Court location.

JUDICIAL LIEN AVOIDANCE

Instructions to Complement Local Rules

Motions to avoid judicial liens should be filed in accordance with the Bankruptcy Code and Rules as well as SC LBR 4003-2 and accompanying exhibits. In chapter 13 cases, motions to avoid judicial liens should be included in the chapter 13 plan.

Pursuant to 11 U.S.C. § 522(f)(2)(B), all liens must be examined in the context of all other unavoids and unavoidable liens. All liens should be addressed within one motion, or motions submitted concurrently, clearly indicating the priority of the lien to be avoided and that senior unavoids liens are included in the calculation.

Motions are to be avoided from junior to senior. Begin with the most junior lien and determine whether it is avoidable in its entirety. All senior judicial liens would be included in the calculation. If the senior lien is avoidable, then it is appropriate to proceed to the next junior lien to determine its avoidability. The junior lien just avoided would not be included in the calculation, but all senior judicial liens would be included. If it is not avoidable or only avoidable in part, then all senior liens would be unavoidable and there is no need to do any further calculation.

In reviewing motions to avoid judicial liens, the following factors are examined:

- Whether a judgment constitutes a lien (the debtor owns real property upon which the judgment has attached or whether a judgment has attached to the debtor's personal property).
- Whether the debtor is entitled to claim an exemption on Schedule C for the applicable property and whether the applicable property is listed on Schedule A. (If no exemption is claimed on Schedule C, a hearing is required in order for the debtor to present evidence demonstrating his or her entitlement to the exemption.)
- Whether the numerical amounts provided on the motion are consistent with the Schedules and Statement of Financial Affairs.
- Whether the judgment is listed in Debtor's Schedules and Statement of Financial Affairs.
- Whether the total amount of all other liens on property includes all mortgages and/or senior judicial liens, where applicable (see Exhibits A and C to [SC LBR 4003-2](#)).

If it is necessary to file a motion to avoid a judicial lien in a closed case, a motion to reopen the case may not be necessary. Likewise, if it is necessary to amend a schedule in direct relation to a lien avoidance issue, a motion to reopen may not be necessary. Nothing herein should be construed to waive any notice requirements with respect to the motion to avoid judicial lien or amendment of schedules.

STUDENT LOAN DEBT

These guidelines establish a procedure for compensation for counsel who provide services to debtors in addressing student loan debt in Chapter 13 cases before the undersigned.

A fee in the amounts set forth below (in addition to the no-look fees established in these Guidelines and not subject to the supplemental fee cap referenced in these guidelines) shall be allowed for any of the following services upon request and permitted by court order:

- 1) **Up to \$1,500** - Contested confirmation hearings on a plan provision addressing student loan debt, including provisions to separately classify student loan debt under § 1322(b)(1), to provide for the curing or waiving of a default under § 1322(b)(3), to provide for the curing of a default and maintenance of payments under § 1322(b)(5), or to address student loan interest under § 1322(b)(10).
- 2) **\$1,250** - Seeking plan confirmation providing for debtor(s)' enrollment in/maintenance of an Income Driven Repayment Plan (IDR) (which includes ICR, IBR, PAYE, or REPAYE, etc. versions) with the U.S. Department of Education and/or any student loan servicer/guarantor and which prohibit debtor(s)' disqualification due to bankruptcy. (An additional fee of **\$200** per year is allowable for necessary reenrollments during the term of the case.)
- 3) **\$1,500** – Participation in court ordered mediation regarding student loan debt **in lieu of a contested hearing**.

To qualify for these fees: (1) for a contested hearing, the parties must file a (joint) statement of dispute, present testimony and other evidence, and/or, for issues of law only, file a separate memorandum of law, or (2) for a settlement before trial of a contested hearing, the settlement must occur after substantial preparation and readiness for trial. In the event of mediation, the fees may be authorized upon the mediator's submission of a mediation report indicating that Debtor(s)' attorney actively participated in the mediation.

As an alternative to these fees, an application seeking additional compensation may also be submitted for expedited consideration.

LOSS MITIGATION/MORTGAGE MODIFICATION

Judge Waites has adopted guidelines and procedures for Loss Mitigation/Mortgage Modification (“LM/MM”) by a separate operating order. These Guidelines on LM/MM are available at <http://www.scb.uscourts.gov/content/judge-waites/>, and are hereby incorporated into the Chambers Guidelines.