

CHAMBERS GUIDELINES

These guidelines supplement other rules and procedures found in the Court's Local Rules and applicable Operating Orders.

COMMUNICATIONS WITH THE COURT

Court and chambers personnel cannot give legal advice or discuss the merits of pending cases. Communications concerning a case or proceeding should be in the form of a written document (*i.e.*, motion, memorandum, or other pleading) filed on the case docket unless Fed. R. Bankr. P. 9003 provides a basis for an *ex parte* communication. Other forms of communication concerning a case or proceeding are prohibited unless expressly authorized by Local Rule, Chambers Guidelines, or other specific authorization.

HEARINGS

A. Location

Unless ordered otherwise, all hearings shall be held in person at the divisional courthouse location in which the case is assigned. The Judges may take steps to avoid in-court appearances by managing cases or proceedings as they deem appropriate, including holding in-person hearings for any division in an alternate location or by telephone or videoconference. Direction regarding the manner of conducting hearings may be provided through hearing notices, other directives posted on the Court's website, or otherwise noticed to the parties involved.

B. Self-Scheduling

Although some hearings are scheduled by the Court, hearings on most matters are self-scheduled pursuant to SC LBR 9013-4. Attorneys shall utilize the Court's CM/ECF system for filing pleadings as indicated therein and select an appropriate hearing location as directed by the Court's published calendars. It is not necessary to contact chambers or courtroom staff before self-scheduling a hearing pursuant to the Local Rules. Available hearing dates can be found on the Court's website under "Self-Scheduled Hearings".

C. Telephonic/Videoconference Participation at Hearings

Requests by counsel to participate by telephone or videoconference must be made either (a) for CM/ECF users through the "Request to Appear Remotely" event in CM/ECF (except as permitted by SC LBR 5005-4(c), in which case option (b) should be utilized) or (b) for others, via email to chambers or courtroom staff. Such requests should be made as soon as possible, but no later than two (2) business days before the date of the hearing. If a request is made to chambers or courtroom staff directly, it must include an explanation for the remote appearance request, the extent of the party or counsel's participation at the hearing, and whether evidence or testimony will be presented, and should advise that all opposing counsel/parties consent. Counsel

and parties should anticipate attending the hearing in person unless the court approves the request for remote appearance.

D. Calendar

Counsel and *pro se* parties should check the calendar prior to a scheduled hearing, even in the event that no objections or responses have been filed, to ensure that a matter has been removed from the court calendar as a result of a withdrawal, default, continuance, approved resolution, or order entered prior to the hearing. To the extent the matter is still on the calendar prior to the hearing, the Judge will call the case at the designated time, and the relevant parties are expected to be in attendance to prosecute their position or answer any questions the Judge may have.

PROPOSED ORDERS

When an order is due after a hearing, CM/ECF participants should file the proposed order on the CM/ECF docket unless otherwise instructed. When the Local Rules require submission of a proposed order in connection with the filing of a routine motion (these proposed orders generally anticipate entry of relief by default), the form proposed order referenced in the Local Rules should be used whenever available. Any other proposed default order should not contain extensive findings of fact. Rather, it should state the relief requested, the basis for relief, that no response was filed, and the relief is granted.

CONTESTED MATTERS

A. Scheduling Orders

Time constraints imposed by statute or rule may preclude formal discovery in contested matters. If parties to a contested matter believe discovery will be helpful, a “Request for Scheduling Order (text entry only)” should be made using the CM/ECF event sufficiently in advance of the first scheduled hearing to permit time for removal from the calendar.

B. Joint Statement of Dispute

If, after due consultation, a matter is identified by the parties as disputed and requiring the presentation of testimony or other evidence, the Court may direct the filing of a joint statement of dispute in the form available under the tab “Local Forms”. The list of exhibits and evidence the parties intend to present at the hearing provided therein should indicate whether the admission is stipulated or the grounds for any objection.

Separate statements of dispute may only be utilized in the rare circumstances when one of the parties is *pro se*, when it is not possible to complete a joint statement of dispute, and/or when the opposing side has been nonresponsive regarding the preparation of a joint statement of dispute. Parties submitting a Separate Statement of Dispute must specify in their Statement why a joint statement of dispute could not be submitted.

C. Requirement to Notify Court

Parties should contact chambers or courtroom staff by email **no later than 10:00 a.m. three (3) business days in advance of the scheduled hearing** if it is anticipated that the hearing will take longer than 15 minutes, live testimony is necessary, or documentary evidence is to be presented and whether any exhibits to be introduced are subject to objection. The Court may continue the matter to another date or time, request supplemental briefing or a Joint Statement of Dispute, or make other requests or accommodations.

D. Exhibits

Parties seeking to submit electronic evidence or exhibits should contact the courtroom deputy as soon as possible and no later than **three (3) business days** prior to a hearing or trial to ask for permission and/or make arrangements and to ensure compatibility with the Court's equipment.

The parties shall exchange exhibits and confer well in advance of the hearing to determine whether they will be able to stipulate to the admission of exhibits. For paper exhibits, parties shall provide courtroom staff the original and three (3) copies sufficiently in advance to permit marking the exhibits for identification and shall also ensure that there are enough copies of the exhibits available for all opposing counsel or parties at the hearing. Contact courtroom staff to deliver exhibits to the location where the trial or hearing will be conducted.

REMOVING MATTERS FROM THE HEARING CALENDAR

A. Settlement

Settlement of a matter on the hearing calendar should be reported by filing a "Notice of Settlement and Request for Removal from the Court Hearing Calendar" in CM/ECF. The parties may be excused from appearance if this event is docketed no later than 10:00 a.m. on the business day before the hearing.

B. Withdrawal

A proponent may withdraw a pleading before a response or objection is filed. After a response or objection is filed, withdrawal can be made only with the consent of all responding parties. The "Withdrawal from the Court Calendar" event in CM/ECF should be used when possible. The consensual withdrawal of a contested matter may be made by the proponent no later than 10:00 a.m. on the business day prior to the hearing.

C. Continuance

A consensual request to continue a hearing may be made using the "Request for Continuance" event in CM/ECF. The request must be made **as soon as possible** and no later than 10:00 a.m. on the business day prior to the hearing, propose a date and time for the continued hearing from the

dates available on the published calendar, and state the specific reason for the request. Continuances are not effective until granted by Court order.

Absent the consent of all parties in interest, a written motion must be filed and served. The motion must report the movant's good faith effort to consult with all opposing counsel, the reason for the request, the assent of those parties consenting to a continuance, and propose dates for the continued hearing, including the availability, if known, of opposing counsel.

With respect to motions to dismiss or convert pursuant to 11 U.S.C. §1112 or motions for relief from stay pursuant to 11 U.S.C. §362, the movant's request for a continuance or consent to a continuance shall be deemed a waiver of the scheduling and ruling deadlines imposed by 11 U.S.C. §§ 1112(b)(3) and 362(e).

D. Calendar Removal Request

If the parties seek to have a matter removed from the calendar other than by settlement, withdrawal, or request for continuance, a separate calendar removal request should be filed using the corresponding CM/ECF event.

11 U.S.C. § 362 MOTIONS

A. Default on § 362 Motion

If no response to a request for relief pursuant to § 362 is timely filed, the movant may file a "Certification of No Response and Request for 362 Default Order" using the CM/ECF event. For removal from the calendar, the Certification must be filed by no later than 10:00 a.m. on the business day prior to the hearing. If this event is used, an automated proposed order for the Judge's consideration is generated, and there is no need to file a calendar removal request. Parties should not file an affidavit of default, proposed order, or calendar removal request unless there is a need to do so.

B. Settlement of § 362 Motion

Settlement of a § 362 motion may be made using the "Request for Settlement Order on Motion for Relief from Stay" CM/ECF event or filing a proposed order and calendar removal request. If the CM/ECF event is used, there is no need to file a calendar removal request. If the request is timely filed, the motion will be removed from the calendar if the settlement order is entered. Language providing for relief upon default under the terms of the settlement order should provide relief from stay "may" be granted, not that it "shall" be granted.

C. Default of § 362 Settlement Order

In the event of a default of a settlement order, the "Default of 362 Settlement Order" CM/ECF event should be filed and state the details of the default, including with specificity the payments that have not been received since entry of the settlement order. Using this event will generate an

automated proposed order for the Judge’s consideration. Parties should not file an affidavit of default or proposed order unless there is a need to do so.

D. Motion to Extend or Impose the Automatic Stay

An affidavit of the movant in support of a motion to extend or impose the automatic stay should be filed with the motion and provide the information necessary to determine whether the requirements of 11 U.S.C § 362(c)(3) are met. The Chapter 13 plan and all schedules should be filed in advance of the scheduled hearing. The debtor is required to appear at the hearing to testify and demonstrate that the filing is in good faith unless the Court enters an order and removes the matter from the calendar in advance of the hearing.

ADVERSARY PROCEEDINGS

A. Pretrial Procedure

Scheduling and other orders giving direction will be issued at the appropriate time, including an order requiring the parties to conduct a discovery conference pursuant to Fed. R. Civ. P. 26(f), make initial disclosures required by Fed. R. Civ. P. 26(a)(1), and report the proposed discovery plan so the Court may issue a scheduling order pursuant to Fed. R. Civ. P. 16(b).

If a stipulation of dismissal is allowed by Fed. R. Bankr. P. 7041, it should be filed as a “Notice of Stipulated Dismissal in an Adversary Proceeding.”

B. Default Judgments

Obtaining a default judgment is a multi-step process under Fed. R. Civ. P. 55, which is incorporated by Fed. R. Bankr. P. 7055:

- i. The first step is to obtain an entry of default. To obtain an entry of default, a plaintiff (or counter-claimant) must file proof of service (if not already filed) and an affidavit of default. The affidavit must contain, among other things, facts showing that the party against whom the default is taken is not in the military service,¹ and is not an infant or incompetent.
- ii. After the default has been entered, the second step is to seek a default judgment. If the claim is for a sum certain or a sum that can be made certain, the request for default judgment can be made by affidavit, filed at the same time as the affidavit of default. For all other claims, the request for default judgment must be made by separate motion, filed after the entry of default. A default judgment must not be

¹ Consult 50 U.S.C.A. § 3931 (“Protection of Servicemembers Against Default Judgements,” as may be amended from time to time) which protects military servicemembers from the entry of a default judgment. That section generally requires a plaintiff who seeks a default to file an affidavit stating whether or not the defendant is in the military service and showing “necessary facts to support the affidavit” or, if the plaintiff is unable to determine military service, an affidavit which states that fact.

different in kind from or exceed the amount prayed for in the demand for judgment.

- iii. Any motion or request for a default judgment must be accompanied by a proposed order. Proposed orders submitted in connection with a request for default judgment should cover all elements of the cause of action. They should include the relevant history of the adversary proceeding and set forth how the complaint adequately pleads each element of the cause of action.

CHAPTER 13 PROCEDURES

A. Attorney Fees

The expedited Chapter 13 debtor's attorney fees amount for purposes of SC LBR 2016-1(b)(1) is \$4,000.00 for consumer cases and \$4,500.00 for business cases. After confirmation, and to the extent funds are available after the deduction of the trustee's commission, the trustee may disburse up to \$1,500.00 to counsel as part of the initial disbursement under the Chapter 13 plan.

B. Conduit Payments in Chapter 13 Plans

Please refer to the Operating Order on Conduit Plans in Chapter 13 Cases in effect at the time for proposing payment of post-petition mortgage payments on claims secured by liens on real property and/or mobile homes by the Chapter 13 trustee through the Chapter 13 plan.

C. Statements of Dispute

If an objection to confirmation is filed by any party other than the Chapter 13 trustee, the confirmation hearing will generally be continued to a new hearing date. In that event, a joint statement of dispute must be filed **no later than 10:00 a.m. two (2) business days** prior to the continued confirmation hearing date. Failure to timely submit a joint statement of dispute may result in the objection to confirmation being overruled and the plan being confirmed unless the objecting party separately files a statement of dispute and notes the inability, after reasonable effort, to file a joint statement.

LOSS MITIGATION/MORTGAGE MODIFICATION ORDERS

A. Order Authorizing Loss Mitigation/Mortgage Modification.

If litigants need an order from the Court to facilitate this process, CM/ECF automated events are available for Chapter 7 and 13 cases that generate orders modifying the stay to permit the debtor to enter into consensual negotiations with the creditor. This event does not require consent. In a chapter 7 case, the request may only be filed if the trustee has filed a report of no distribution or a report of abandonment of the specific property on which the debtor intends to pursue loss mitigation.

B. Order Regarding Permanent Loan Modification

The CM/ECF automated event permits Chapter 13 debtors to upload documents evidencing an agreed permanent loan modification. When the Chapter 13 trustee electronically consents, a form order is generated modifying the stay and authorizing the trustee to stop making payments on the mortgage arrears. There is no corresponding order for Chapter 7 cases.

MODIFICATION OF CHAPTER 11 PLANS

Except in a small business case or a case under subchapter V of Chapter 11 where the appropriate Official Form plan is filed, to the extent an amendment to the disclosure statement or plan is filed with the Court amending the previously filed document, the proposing party shall file on the docket both a clean and “redlined” version of the amended document providing a comparison of the document reflecting any changes (*i.e.*, added language can be in bold, while deleted language can be reflected as being struck through). To the extent service of the amended document is required by the Bankruptcy Code, Federal Rules of Bankruptcy Procedures, or applicable Local Rules, the redlined version should only be filed on the docket but not served.