

Interim Procedures and Scheduling of Hearings Before the Hon. Alan S. Trust
(11/05/09)

Judge Trust will publish specific calendar dates for hearing certain types of matters from time to time, as well as interim operating procedures.

SELF CALENDARING HEARING DATES AND TIMES:

The following matters may be self-calendared for hearing at the following times.

Counsel may utilize this self-calendaring procedure for the scheduling of motions requiring **30 minutes or less** of court time (time estimate must include estimates for the **entire** hearing). This procedure will allow counsel to self-select available dates and times on the appropriate judge's calendar and serve notice without contacting the courtroom deputy for a hearing setting. The court strongly encourages the use of this self-calendaring procedure when appropriate.

PLEASE NOTE: Motions and applications which are self calendared, and to which an objection is filed, and for which any party reasonably believes an evidentiary hearing will be required, will be called at the time self-calendared for status only, at which time the Court will discuss scheduling an evidentiary hearing. Parties, therefore, are not required to bring witnesses to the self calendared hearing.

Chapter 7 and Chapter 13 Motions (except motions for relief from the automatic stay or motions to extend or impose the stay):

Tuesday, Dec 1 at 9:30 am
Tuesday, Dec 15 at 9:30 am

The Judge will hear agreed and unopposed Motions at the beginning of the calendar.

Motions for relief from the automatic stay and Motions to extend or impose the automatic stay (Chapter 7 and 13 only):

Motion to extend or impose the automatic stay:

Thursday, Dec 3 at 9:30 am
Thursday, Dec 17 at 9:30 am

Motion for relief from the automatic stay as to vehicles only:

Thursday, Dec 3 at 10:00 am
Thursday, Dec 17 at 10:00 am

All other Motions for relief from the automatic stay:

Thursday, Dec 3 at 10:30 am
Thursday, Dec 17 at 10:30 am

Motions to extend or impose the automatic stay under Bankruptcy Code § 362(c) shall be accompanied by an affidavit or affirmation supporting the motion. The Debtor(s) and counsel are required to attend the hearing on a motion to extend or impose the automatic stay.

Motions for relief from the automatic stay under Bankruptcy Code § 362(d) may not be filed by notice of presentment under E.D.N.Y. LBR 2002-1, and must be scheduled for a hearing.

Motions for relief from the automatic stay to foreclose a mortgage on real property or a security interest in a cooperative apartment **must** comply with E.D.N.Y. General Order 533. All other motions for relief from the automatic stay must be accompanied by an affidavit or affirmation which sets forth the basis for the relief sought.

The Judge will hear agreed and unopposed Motions at the beginning of the calendar.

A request for an order confirming the termination or inapplicability of the automatic stay pursuant to Bankruptcy Code §§ 362(c)(4)(A)(ii) or (j) must comply with E.D.N.Y. LBR 4001-2 and may be brought by Notice of Presentment in accordance with E.D.N.Y. LBR 2002-1.

Chapter 11 Motions (including relief from the automatic stay):

Wednesday, Dec 2 at 9:30 am

Wednesday, Dec 16 at 9:30 am

Motions to extend or impose the automatic stay under Bankruptcy Code § 362(c) shall be accompanied by an affidavit or affirmation supporting the motion. The Debtor(s) and counsel are required to attend the hearing on a motion to extend or impose the automatic stay.

Motions for relief from the automatic stay under Bankruptcy Code § 362(d) may not be filed by notice of presentment under E.D.N.Y. LBR 2002-1, and must be scheduled for a hearing.

Motions for relief from the automatic stay to foreclose a mortgage on real property or a security interest in a cooperative apartment **must** comply with E.D.N.Y. General Order 533. All other motions for relief from the automatic stay must be accompanied by an affidavit or affirmation which sets forth the basis for the relief sought.

The Judge will hear agreed and unopposed Motions at the beginning of the morning's calendar.

Final Meetings and Fee Applications in Chapter 7 Asset Cases:

Tuesday, Dec 1 at 1:30 pm

Tuesday Dec 15 at 1:30 pm

Please see Judge Trust's procedures below regarding excusing appearances at such hearings.

SCHEDULING HEARINGS:

To schedule a hearing in a matter not addressed above, please contact chambers as follows:

All contact with Chambers shall be made by email directed to the Judge's Courtroom Deputy, Yvette Mills, at ast_hearings@nyeb.uscourts.gov.

If Counsel is requesting a hearing before Judge Trust's which is reasonably believed to require more than **30 minutes of court time** (time estimate must include estimates for the **entire** hearing), Counsel must so indicate in the email to Judge Trust's courtroom deputy requesting the hearing, and must include a reasonable time estimate for the **entire** hearing.

In the "Subject" line of the email, please only use one of the following four designations:

- Scheduling Hearing
- Adjournment
- Telephonic Appearance
- Emergency motions and orders to show cause
- Time estimate for the entire hearing

If you do not have access to email, you may contact the Judge's Courtroom Deputy, Yvette Mills, at (631) 712-6277, to schedule or adjourn a hearing. **Please do not contact the Judge's**

law clerk or judicial assistant.

Orders to Show Cause; Ex Parte Orders; and Orders Shortening Time:

Orders to show cause; *ex parte* orders; and orders shortening time shall comply with E.D.N.Y. LBR 9077-1. **After** filing with the Court, please notify the Judge's Courtroom Deputy, Yvette Mills, using the procedures set forth above.

MATTERS FOR WHICH HEARINGS ARE NOT REQUIRED:

Final Meetings and Fee Applications in Chapter 7 Asset Cases:

The Court will excuse the appearance of Trustees and their retained professionals for Chapter 7 final meetings and the associated fee/commission applications where each fee and commission request is less than \$10,000.00 (including expenses). **If an objection is timely filed, or if the Court so directs, the Trustee and professionals shall attend the final meeting/fee application hearing.** If a party fails to interpose a timely objection, but appears at the final meeting/fee application hearing to object and the professionals or trustee are not present, the Court may adjourn the matter and notify the parties of the adjourned hearing date. Nothing herein shall modify the manner in which final meetings and the associated fee/commission applications are noticed for hearing.

Motions brought by Presentment:

The following motions may be brought by notice of presentment in accordance with E.D.N.Y. LBR 2002-1:

- Motion to approve a compromise or settlement.
- Motion to extend time to file objection to discharge and/or dischargeability of debt.
- Motion to modify a Chapter 13 plan after confirmation.
- Motion objecting to a claim(s).
- Motion to allow a late filed claim.
- Motion to reopen a case.
- Motion to convert a case.
- Motion to redeem property.
- Motion to avoid a lien(s).
- Motion to approve a sale.
- A request for an order confirming the termination or inapplicability of the automatic stay pursuant to Bankruptcy Code §§ 362(c)(4)(A)(ii) or (j).

If an objection is timely filed, or if the Court so directs, the Court shall set the application for hearing, and direct the party filing the application to provide notice thereof.

Motions brought by presentment do not require a hearing date. Instead, the Notice must contain the following text, conspicuously displayed after the objection deadline is set out in the same size as or larger font than the statement of the relief sought, and in bold letters:

Please be advised that if an objection is timely filed to the relief requested, or if the Court determines that a hearing is appropriate, the Court will schedule a hearing. Notice of such a hearing will be provided by the movant.

Motions in Adversary Proceedings to be heard by submission:

All motions in adversary proceedings pursuant to Rules 7012, 7013, 7015, 7037, 7055 and 7056 of the Federal Rules of Bankruptcy Procedure, shall be by presentment only. **In the Notice of Presentment the movant shall include language stating that any response to any such motion, other than a motion under Rule 7056, shall be due thirteen (13) days after the date of filing; the response to a motion under either Rule 7055 or Rule 7056 shall be due twenty three (23) days after the date of filing.** The motion shall be considered ripe for ruling after the response date has passed, unless the Court sets a different response date, requests further briefing, or has previously issued a scheduling order which establishes a different date for response(s). **In the event the Court determines that a hearing is warranted, the Court will notify the parties of the hearing date and time. Prior to filing any other motion in an adversary proceeding, the movant shall contact Judge Trust's Courtroom Deputy, Yvette Mills, following the procedures for scheduling hearings outlined above, to determine if a hearing is required.**

Stipulations or Settlements in Contested Matters and Adversary Proceedings

If the parties enter into a stipulation or settlement of a matter scheduled for hearing in a contested matter or for trial in an adversary proceeding, such matter will **not** be removed from the Court's calendar and the parties will **not** be excused from appearance until the parties file with the Court the stipulation or settlement, or file a letter setting out the material terms of the stipulation or settlement, **and** email same to the Courtroom Deputy, stating that the stipulation or settlement or letter has been filed. Upon receipt of the email the Court will determine whether the parties will be excused from the hearing/trial and shall notify the parties of same. **Under no circumstance should the Courtroom Deputy be notified telephonically of a settlement.** Please further note that motions seeking approval of stipulations or settlements must comply the applicable Bankruptcy Rules and the applicable E.D.N.Y Local Bankruptcy Rules.

Interim Fee Applications brought by Presentment:

Applications for interim compensation of Chapter 7, 11 or 15 professionals retained pursuant to Court Order may be brought by notice of presentment in accordance with E.D.N.Y. LBR 2002-1:

Applications for interim compensation of Chapter 7, 11 or 15 professionals may be brought by presentment if the following criteria are met:

- In a Chapter 7 case, for professionals retained by the trustee pursuant to Order of this Court, where each fee request is less than \$10,000.00 (including expenses).
- In a Chapter 11 case, for professionals retained by the debtor, the trustee, any official committee, or by an examiner, pursuant to Order of this Court, where each fee request is less than \$25,000.00 (including expenses).
- In a Chapter 11 case, for the trustee or examiner, where each fee request is less than \$25,000.00 (including expenses).
- In a Chapter 15 case, for professionals retained by any foreign representative pursuant to Order of this Court, where each fee request is less than \$25,000.00 (including expenses).

If an objection is timely filed, or if the Court so directs, the Court shall set the application for hearing, and direct the party filing the application to provide notice thereof.

Nothing contained here in shall modify any monthly fee order which may be entered in a particular case in accordance with General Order 538.

Applications brought by presentment do not require a hearing date. Instead, the Notice must contain the following text, conspicuously displayed after the objection deadline is set out in the same size as or larger font than the statement of the relief sought, and in bold letters:

Please be advised that if an objection is timely filed to the relief requested, or if the Court determines that a hearing is appropriate, the Court will schedule a hearing. Notice of such a hearing will be provided by the applicant.

MISCELLANEOUS ADDITIONAL PROCEDURES

Submission of Orders:

Proposed orders should be electronically submitted to Chambers. Please see the following web page for further information on procedures for filing electronic orders:

http://www.nyeb.uscourts.gov/ecf_gen_admin_order.html

Consensual Adjournments:

Requests for agreed adjournments are to be emailed, following the above procedures, at least two (2) business days prior to the scheduled hearing date. Requests must state the reason why the adjournment is being sought. If an adjournment is not granted, the parties are required to appear. Any requests for an agreed adjournment must be copied to all parties who have filed papers related to the subject hearing.

If an adjournment is granted, the party requesting the adjournment must docket a letter or notice in the official CM ECF records regarding the adjournment, setting out the date and time to which the hearing has been adjourned. Such letter or notice must be docketed prior to the date and time of the hearing which is being adjourned, and must be contemporaneously served via electronic mail or fax to the parties who have filed responses or oppositions to the motion or application, and to the parties who have filed notices of appearance in the case.

Appearances by telephone:

Requests to appear by telephone are to be emailed, following the above procedures, at least two (2) business days prior to the scheduled hearing date. **Requests must state the reason why the telephonic appearance is being sought. If a telephonic appearance is not granted, the parties are required to appear in person.** Any request for a telephonic appearance must be copied to all parties who have filed papers related to the subject hearing.

Appearances by video from the Conrad B. Duberstein United States Bankruptcy Courthouse in Brooklyn:

The Court has facilities available to permit appearances to be made by video from the Conrad B. Duberstein United States Bankruptcy Courthouse in Brooklyn. Requests to appear by video are to be emailed to the Judge's Courtroom Deputy, Yvette Mills, at ast_hearings@nyeb.uscourts.gov at least ten (10) business days prior to the scheduled hearing date. Requests must state the reason why the video appearance is being sought. If a video appearance is not granted, the parties are required to appear in person. Any request for a video appearance must be copied to all parties who have filed papers related to the subject hearing.

Relief must be requested by motion, complaint, application or request, not letters

Letters may not be used in lieu of pleadings unless expressly authorized in advance by the Court. A request for relief, whether by motion, complaint, application or request, must be made by a pleading filed in accordance with the applicable Federal Rules of Bankruptcy Procedure and the

Local Bankruptcy Rules. Responses, answers and oppositions thereto must also be by pleadings, not letters.

Exhibits:

Exhibits for any trial or contested hearing shall be filed and retained in accordance with E.D.N.Y. LBR 9070-1(a). The Court will strictly follow E.D.N.Y. LBR 9070-1(b) with respect to removal of exhibits from the Court. Parties are reminded that a sufficient number of copies shall be brought to any trial or contested hearing so that copies may be provided to each counsel and a witness. In addition, three additional copies shall be provided for the Court.