



**PROCEDURES MANUAL FOR PRACTICE IN
DIVISION H2, VICTORIA, LAREDO, HOUSTON
JUDGE WESLEY W. STEEN
UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
(Updated 6/15/09)**

THIS PROCEDURES MANUAL IS PROVIDED FOR THE ASSISTANCE OF THE BAR, PARTICULARLY FOR THOSE WHO ARE NOT FAMILIAR WITH THE PROCEDURES AND PRACTICES IN THIS DIVISION. THIS IS NOT A REITERATION OF (OR AMENDMENT OF) THE LOCAL RULES, BUT SHALL BE USED IN CONJUNCTION WITH THOSE RULES.

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CONTACT WITH THE COURT AND WITH COURT PERSONNEL

1. Communications directed to the judge regarding any case should be either by pleadings filed in the case or by statements made in open court on the record. Letters to the judge or telephone calls to the judge regarding cases are not permitted.
 - a. I do not conduct hearings or conferences in chambers or on the telephone (except for telephone or televised hearings “on the record” in limited circumstances as described below).
 - b. Letters to the judge, copies to the judge of letters to other parties/counsel in the case, telephone calls to the judge, and e-mails to the judge related to any specific case are not appropriate. They are prohibited by FRBP 9003.
 - c. If counsel or a *pro se* party would like to call something to the judge’s attention, put it in a pleading and file it into the record. (Sometimes, counsel will be directed to provide a courtesy copy to chambers. Even when not specifically directed to provide a courtesy copy to chambers, you are encouraged to provide courtesy copies of memoranda, witness and exhibit lists, plans of reorganization, disclosure statements, and similar documents, so long as they are merely copies of documents filed into the record.)
 - d. Courtesy copies should be delivered to the case manager unless otherwise directed.
2. Counsel and parties should seek answers to their questions **FIRST** by reviewing local rules, docket sheets, case files and other materials available to the public.
3. However, when other sources of information and other lines of communication are inadequate, (especially if internet resources are erroneous or not working properly) feel free to contact appropriate court personnel.
 - a. The principal contact for case related information is the case manager:
Ms. Jean Kell
713-250-5779
 - b. If unable to contact Ms. Kell, contact my courtroom deputy
Ms. Berdine Carter
713-250-5137
 - c. In case of emergency, call my law clerk or judicial assistant at: 713-250-5153.
4. E-mail or fax contact is permitted **only by specific, prior, permission from the court or court personnel.**

CONTINUANCES, EXTENSIONS OF TIME, AND SETTLEMENTS

1. All hearings and adversary trial settings are specific reservations of time, even § 362 hearings. You should expect to try the matter and to conclude it on the date(s) first assigned. That may require evening, early morning, weekend, or holiday sessions. But once it starts, it will generally proceed until concluded.
 - a. Note that this means that both creditors and debtors should be prepared to proceed to hearing on 362 matters on the first date assigned (i.e. the “preliminary hearing”) unless the parties have an agreed order to present.
2. Scheduling orders are written after consideration of the specifics of your case. A definite time has been reserved for hearing your matter. My staff and I prepare for every court setting. Therefore:
 - a. Continuances and extensions of time are the exception, not the rule.
 - b. If you need a continuance or extension:
 - i. Do not just agree among yourselves. I might not accept your agreement.
 - ii. File a motion for approval. Ask early. The time can be made available for someone else.
 - iii. Do not be optimistic that you will get the extension, unless the extension is requested early, for good reason, and without major interruption of the overall schedule.
 - c. If you settle a matter:
 - i. **LET MY STAFF KNOW AS EARLY AS POSSIBLE.** Nothing is more frustrating than to work late or on a weekend to prepare for a trial (reading briefs and pleadings) only to be told that it settled.
 - ii. Having said that, it is axiomatic that many matters cannot and will not settle until the eve of trial. Do not be reluctant to settle just because it is the eve of trial. Just let my staff know as soon as possible.

CIRCUIT RIDING AND MY SCHEDULE

1. I have been assigned division H2 in Houston. I have also been assigned the bankruptcy cases in Victoria and in Laredo. A **TYPICAL WEEK** is scheduled as follows:
 - a. Monday: I am usually in Houston on Monday of each week. Because this is the most consistent day of the each week, it is typically scheduled as follows:
 - i. 9:30 a.m. - motions for relief from stay
 - ii. 11:00 a.m. and following - Complex Chapter 11 Cases.
 - iii. Other matters as may be assigned.
 - b. The schedule for Tuesday, Wednesday, and Thursday differs. Two weeks of each month I ride circuit to Victoria and to Laredo. On alternative weeks, I am in Houston.
 - i. Weeks when I ride circuit–
 - (1) Tuesday –I travel to Victoria and begin the docket at 1:00 p.m. One of these Tuesdays in Victoria will include a Chapter 13 panel.
 - (2) Wednesday–I hold court in Laredo beginning at 1:00 p.m. One of these Wednesdays in Laredo will include a Chapter 13 panel.
 - (3) Thursday–I hold court in Laredo beginning at 9:30 a.m.
 - ii. Weeks when I am in Houston–On Tuesday, Wednesday, and Thursday of weeks when I do not ride circuit, I schedule trials or hearings of contested matters or adversaries, as well as other matters, such as pretrial conferences.
2. Of course, any number of things change the schedule for a typical week, including holidays, court meetings, continuing education and conferences, vacations, illness, *etc.* For the convenience of the bar and the public, a reasonably current schedule can be found at the following internet links:
 - a. My anticipated travel schedule for the next six months.
 - b. My anticipated court schedule for the next 4 weeks.
 - c. My anticipated schedule for Complex Chapter 11 cases.
 - d. The debtor’s proposed hearing agenda for Complex Chapter 11 Hearing Days.
3. These schedules are updated frequently. However, they change from time to time and are provided strictly for convenience. They are not definitive of the matters to be heard. “Notice” as defined by the FRBP and “service of process” for due process are defined by the FRBP, local rules, and court orders.
4. Errors in the schedules and difficulties with use of the internet schedules should be reported to my staff.

HEARINGS BY CONFERENCE TELEPHONE CALL AND BY TELEVISION

1. The court has installed facilities to conduct hearings by conference telephone call and by television. It is important to know how to request permission to use these facilities, to understand how to use those facilities, and to understand when I will authorize their use.
 - a. Trials and contested hearings will almost always be conducted without the use of conference telephone calls and television.
 - b. Other hearings, status conferences, and pretrial conferences are generally more satisfactory and productive when counsel, parties, and witnesses are present in person. Therefore, counsel, parties, and witnesses will generally be required to attend in person. However, there are some court proceedings for which these facilities are useful:
 - i. Hearings by conference telephone call:
 - (1) The principal uses are:
 - (a) Status conferences and pre-trial conferences involving limited issues that do not justify the expense of travel and attendance in open court;
 - (b) Emergency hearings and conferences, and those that cannot be conducted in the appropriate city because of my schedule for riding circuit.
 - (c) Examples: announcements of settlements, minor scheduling matters, discovery disputes, *etc.* where the cost of travel and attendance in court is not justified by the magnitude of the issues.
 - (2) The procedure is:
 - (a) When proceedings can appropriately be conducted by conference telephone call, parties should e-mail 2 DAYS PRIOR TO THE HEARING for permission to do so. The e-mail address is cmA580d@txs.uscourts.gov
 - (b) The “Meet-me” telephone number is 713-250-5246.
 - (c) Parties with permission to use the Meet-me line to attend a hearing or conference should call the Meet-me telephone number about 5 minutes prior to the scheduled hearing time. The telephone will ring until at least two parties have dialed the number. Allow the telephone to ring. When the second person dials the number, the two parties will be connected and the telephone ringing will stop. Additional parties will be connected immediately after dialing the number.
 - (d) Remain quietly on the line until I call your matter for hearing.

- (e) Notwithstanding the fact that you are participating by telephone, you are nevertheless “on the record” in a federal court proceeding. You should conduct yourself accordingly. Note carefully the protocol discussed below.
- ii. Hearings by television:
 - (1) The television facilities are located in the courtrooms in Houston, Victoria, Laredo, Corpus Christi, Brownsville, and McAllen.
 - (2) The principal use of televised hearings is to allow me to conduct a hearing in one city notwithstanding a conflicting travel schedule that requires me to ride circuit to another city on that date. In addition, on occasion I will authorize parties (particularly the U.S. Trustee) to utilize the television facility to minimize travel expense.
 - (3) Use of these television facilities involves actual presence in the courtroom. Parties should conduct themselves accordingly. Note carefully the protocol discussed below.
 - (4) If parties have compatible television equipment, attendance from your remote location might be possible. Counsel may contact my case manager to discuss this and other requests.
- iii. Conducting hearings by conference telephone calls and by television is experimental. Use of these facilities may be expanded or reduced according to experience.
- c. Protocol for both telephone and television hearings.
 - i. All telephone and televised hearings and conferences are “on the record”, with the same formality and electronic recording that is made of other hearings.
 - (1) All participants should remember that they are participating in a federal court proceeding, and should conduct themselves accordingly.
 - (2) Participation in a hearing or conference by electronic means is a privilege not a right.
 - (a) Prior permission must be obtained from the court’s staff.
 - (b) Permission should not be requested unless the matter is within the parameters discussed above as appropriate for attendance by television or conference telephone call.
 - (3) With respect to conference telephone calls, it is the responsibility of each participant to assure that he or she has adequate facilities and equipment to participate in the hearing by telephone.
 - (a) There is sometimes a problem in conference telephone calls with background noise and conversations. The participant must assure that this does not happen.
 - (b) The participant must also assure that he or she has adequate equipment. Occasionally participants attempt to use

speaker phones that produce feedback or inaudible transmissions.

2. ALL COUNSEL AND PARTIES MUST REMEMBER THAT ALL HEARINGS AND CONFERENCES ARE “ON THE RECORD” REGARDLESS OF WHETHER THEY ARE CONDUCTED IN THE COURTROOM, BY CONFERENCE TELEPHONE CALL, OR BY TELEVISION. It is particularly important to remember that:
 - a. The proceedings are recorded electronically.
 - b. To make a proper record, you MUST identify yourself each time that you speak. It is very difficult to identify a voice over the telephone (or television) unless you state your name.
 - c. Only ONE person may speak at a time.
 - d. If you have exhibits to introduce, those exhibits must be provided to each party and to the courtroom deputy PRIOR TO THE HEARING, regardless of the city in which you participate. If you cannot do that, then the matter is simply not appropriate for a telephone or television hearing.

MOTIONS FOR RELIEF FROM THE STAY

1. Consult the Bankruptcy Local Rules (BLR) for this district which can be found at www.txs.uscourts.gov/lcrules.htm.
2. Failure to comply with the BLR can, in the court's discretion, result in adverse adjudication. Common errors are:
 - a. Failure to file proof of service. (When counsel files a motion for relief from the stay, it is automatically set for hearing by the clerk. The movant must serve notice of the hearing and must file proof of service on the form provided by the clerk. Consult the BLR or ask the clerk for help).
 - b. Failure to file a response.
 - c. Improper service on the United States. See FRBP 7004(a), FRCP 4(i).
 - d. If the parties have not reached an agreement prior to the initial hearing date (the "preliminary hearing" date), they should be prepared with witnesses and documents to proceed to trial. "Passing to final hearing" generally just wastes time. Be prepared to go to final hearing on the first date set.
3. If the parties have an agreed order, present it at the initial hearing date. Avoid "submitting in 10 days under greensheet" if at all possible.
4. Local rules require the exchange of witness and exhibit lists. You should have exhibits and witnesses ready for trial. You should exchange witness and exhibit lists with opposing counsel sufficiently in advance of trial to allow efficient and adequate adjudication. Some latitude is allowed for counsel in 362 motions because the matter is set for hearing so quickly. However, good (safe) practice requires compliance with the rules.
5. We diary motions for which parties have promised to provide an agreed order. If the agreed order is not timely submitted, the motion will be dismissed for want of prosecution. If you encounter problems in submitting the order, file a motion to reset the hearing. The usual requirements apply to notice of the motion.

MOTION PRACTICE GENERALLY

1. Local rules require the exchange of witness and exhibit lists. The court will attempt to avoid severe and irreparable prejudice to clients if counsel and parties fail to comply. The court will attempt to use a materiality standard, will attempt to take mitigating factors into account, and will attempt to assess prejudice to the opposing party, but everyone should expect that failure to comply with the rules could result in adverse adjudication.
2. Routine case administration—if you understand how the court personnel manage your pleadings and schedule our work, it will help you to interface smoothly with the system. (Note: these procedures govern the vast majority of matters filed with the court; however, different procedures apply to § 362 motions, to Complex Chapter 11 cases, to fee applications, and to complaints initiating adversary proceedings.)
 - a. When you file a motion (or application or other matter), my case manager reviews it to see whether it is an emergency motion or one that requires expedited treatment.
 - b. If the motion is an emergency or expedited matter, the case manager brings it to my attention.
 - c. If the matter does not require emergency or expedited treatment, my case manager puts it into a diary for review in about 25 days to determine whether an answer or other response has been filed.
 - i. If a response is filed, the case manager provides me with the motion and response. I then generally instruct the case manager to set it for hearing.
 - ii. If no response is filed, I generally rule on the motion within 35 days after it is filed. If appropriate, however, I may set it for hearing.
 - iii. NOTE: local rules require you to file a proposed form of order with your motion or application. If you do not provide a proposed form of order, I have nothing to sign to grant the relief that you have requested. Since bankruptcy judges in the SD TX sign about 40 orders per day, it is not possible for us to provide the forms of order in most routine matters.
 - d. If you have not had a ruling or hearing set on a motion within 40 days after it is filed, you may contact the case manager.

EMERGENCY MATTERS

1. Emergencies—avoid emergency motions and motions for expedited hearing. Although there are circumstances that require special treatment, it should not be the norm. Counsel who routinely file emergency motions simply demonstrate that they are not adequate to the task of anticipating case development and client needs.
2. If your emergency matter requires court attention within one business day, contact my case manager to alert her to the emergency.

CHAPTER 13 PRACTICE

[Note: this section is reserved. Discussions are underway with a committee of the bar association to review Chapter 13 procedures. This section of the practice manual will be provided upon completion of that process.]

CHAPTER 11 CASES—OTHER THAN COMPLEX CASES

1. It is my experience that some Chapter 11 cases are quite small, do not have active creditor representation, do not have a creditors' committee, and frequently stagnate. In the past, it was not unusual for these cases to terminate by conversion or dismissal after years of inactivity, after the debtor had ceased business and the assets had disappeared. In addition, the Chapter 11 process is frequently so expensive and drawn-out that small businesses cannot afford extended delays appropriate in very large cases.
2. In Bankruptcy Code Section 105, Congress gave bankruptcy judges authority for active case management. In addition, that section allows bankruptcy judges to implement procedures (such as conditional approval of disclosure statements) that reduce the delays and expense for small businesses in Chapter 11. It is my policy to implement case management authorized by § 105 as discussed below.
3. Whenever a Chapter 11 case is allocated to my division, I review the case to see whether the case might need active judicial management. If it appears that it might:
 - a. I issue an order for a § 105 status conference to determine whether active case management and whether expedited procedures are appropriate.
 - b. To make that determination, at the status conference I will consider all facts and circumstances including the nature of the business and the reasons why a Chapter 11 petition was filed, whether there will be active creditor involvement, whether the debtor is fulfilling its obligations to file schedules and statements of affairs and to report to the U.S. Trustee, whether the debtor is fulfilling its fiduciary responsibilities for insurance and management (including cash management), whether the debtor has filed (and is filing) tax returns, *etc.*
 - c. A memorandum and order is issued from the status conference that includes a summary of the explanation given by the debtor. In addition, orders may be issued requiring the filing of tax returns, requiring the debtor to obtain insurance coverage, requiring compliance with cash collateral and cash management requirements, setting a deadline for filing a plan and disclosure statement, and any other matters that appear to be appropriate.
 - d. Periodically I may conduct other scheduling conferences.
 - e. If circumstances appear to be appropriate, I may authorize expedited procedures for filing and approval of a disclosure statement, essentially adopting the procedures for businesses electing small business treatment under the Bankruptcy Code and BLR. Those procedures and requirements will be defined in the memorandum and order following the status conference and in subsequent orders.

COMPLEX CHAPTER 11 CASES

In a joint effort to promote effective, efficient, economical, and expeditious handling of Complex Chapter 11 cases, a joint committee (including judges as well as business bankruptcy practitioners) developed special procedures for handling Complex Chapter 11 cases. Classification of a case as a Complex Chapter 11 Case is determined by a number of factors, including size, complex legal and financial issues, need for expedited treatment of critical motions, and active representation of all parties in interest.

After considerable work with the committee, the court issued [General Order 2000-2](#) which now defines special procedures for such matters as assignment, docketing, noticing, and scheduling of Complex Chapter 11 cases.

1. Overview of Complex Chapter 11 Procedures.

A party may designate a case as a Complex Chapter 11 Case by filing an appropriate notice. The first-day pleadings and proposed orders are immediately presented to a judge who determines from the initial pleadings whether the case appears to warrant Complex Chapter 11 treatment. If the judge determines that the case is a Complex Chapter 11 Case, the judge issues an appropriate Initial Order. The judge also sets a hearing within two business days to consider emergency “first day orders”.

2. The Initial Order.

In addition to designating the case as a Complex Chapter 11 Case, the Initial Order contains several important provisions that make administration of a Complex Chapter 11 Case more efficient, economical, and expeditious:

- (1) The order requires formulation, filing and updating of a “notice list”;
- (2) The order provides special procedures for setting hearings and giving notice of hearings;
- (3) The order requires a Proposed Hearing Agenda; and
- (4) Other matters.

A sample Initial Order can be viewed at www/bklclrl/compannc.htm. However, you must understand that the sample order may be modified in each case to reflect the circumstances of that case and you should also understand that the Initial Order may be modified or even abrogated during the case to reflect developing exigencies. **Each party involved in a Complex Chapter 11 Case should study the specific Initial Order applicable to that case and should be alert for any changes in the Initial Order.**

3. Practice Manual.

The bar association Complex Chapter 11 Case Committee is drafting a Practice Manual including forms and suggested pleadings that the committee believes to be reflective of local practice and helpful in the conduct of Complex Chapter 11 cases. Although the forms will not be

approved or mandated by the court, parties involved in Complex Chapter 11 cases in the Southern District of Texas might find the Practice Manual to be helpful. A link to the internet page will be provided here when the manual is available.

4. Complex Chapter 11 Dockets.

Substantial information for Complex Chapter 11 Cases is available on the internet, including:

- a. A schedule of my "Hearing Days" for Complex Chapter 11 cases.
- b. A schedule of my calendar for 4 weeks.
- c. A "Debtor's Proposed Hearing Agenda" for the next Hearing Day (in some cases).
- d. My anticipated "circuit riding" schedule.
- e. Imaged copies of all pleadings.

Errors and difficulties with these internet resources should be reported to my staff.

5. Late-Filed Pleadings.

We prepare for all hearings prior to the scheduled hearing time. If you file a pleading less than 2 business days prior to the scheduled hearing time.

6. The Initial Order Requires Notice of Hearing For All Motions.

All motions must be noticed for hearing, even motions that are "agreed" or uncontested. See the Initial Order for instructions on designating the date and noticing the motion for hearing.

7. Continuances.

If you need to continue ("pass") a hearing, please notify my case manager as soon as you know that you will request a continuance. If there is no substantial prejudice to any party in interest, the Court will generally grant the continuance requested. The time previously scheduled for the hearing will be used as a status conference and for re-scheduling. Parties may request attendance by telephone or television. The Court will reschedule the matter for another hearing date chosen (generally at the suggestion of the parties) to allow sufficient time for preparation but soon enough to avoid material prejudice from the continuance.

8. Attorney Admissions.

Bankruptcy Local Rule 1001(e) provides that District Local Rule 83.1 governs admission to practice in a case. Rule 83.1(k) provides for admission by motion to participate in a single case if you are not admitted to practice generally in the Southern District of Texas.

Counsel should take the necessary steps to comply with these rules. The rules and a convenient form can be found on the Court's internet page at www.txs.uscourts.gov. Use the "Attorneys" link. If you do not use the form, you should disclose in your motion: 1) the state(s) in which you are admitted to practice; 2) the federal district court(s) in which you are admitted to practice; and 3) any disciplinary proceedings, reprimands, sanctions, suspensions or disbarments. For additional information about the requirements to practice in this District, please contact Attorney Admissions at 713-250-5041.

COMMON ERRORS TO AVOID

1. Failure to attach documents. If you state that a document is attached, attach it.
 - a. Certificates of service frequently state: “This pleading was served on the parties indicated on the attached service list.” But no service list is attached.
 - b. Pleadings frequently state: “Debtor requests authority to sell the property listed on Attachment A.” But there is no attachment to the pleading.
2. Failure to attach proposed forms of orders. Local rules require that a proposed form of order be attached to each motion. Frequently, no order is attached. Bankruptcy judges sign approximately 40 orders per day. There is simply not time to prepare an order for you.
3. Failure to sign and to date your pleadings. It is not unusual for a pleading to be filed without signature. It is also not uncommon for a certificate of service to be filed without signature or without a date.
4. Failure to pay adequate attention to form motions, especially motions to avoid liens.
 - a. Specifically list the property subject to the lien.
 - i. Includes a description of the property, not just the brand name.
 - ii. Examples :

Do Not Use	Use
John Deere	John Deere Riding Mower- preferably with a serial #
Sony	1999 Sony 25" Color TV- preferably with a serial #

- b. Assure the Creditor named in the Motion is the same Creditor that you list in the Certificate of Service. It is not unusual to get a motion to avoid a lien held by “Friendly Finance,” but the motion was served on “City Finance.”
- c. If you refer to attached exhibits:
 - i. Assure that the exhibit is attached.
 - ii. Assure that the exhibit is legible.
- d. For the Order:
 - i. The key word that should be in the proposed form of order is “GRANTED”. Do no make vague references that do not include a dispositive ruling on the motion.
 - ii. In the proposed form of order, list the property that is subject to the lien - the same description that is in the motion itself. It is insufficient to say only that “The Motion to Avoid Lien of Friendly Finance is Granted.”

5. Failure to file adequate proofs of service for § 362 motions.
 - a. Fill out the Clerk's form legibly. File it immediately, as required.
 - b. If you refer to an attached list of creditors, assure that the list is actually attached.
 - c. Do not simply state that you have served all parties. State who you served and the address at which you served them.