Chief Judge R. Kimball Mosier

Information and Contacts

Courtroom 369
Frank E. Moss, U.S. Courthouse
350 S Main Street,
Salt Lake City, Utah 84101

View Anticipated Calendar [1]

Schedule a Hearing online [2]

Calendar Hearings:

- Judianne Genovese, 801-524-6627

Judicial Assistant:

- Shannon Robinson, 801-524-6568

Law Clerk:

- John Straley, 801-524-6569

Judge Tabs

Chamber Procedures Communications with chambers

Telephone calls to chambers are permitted.

- Judicial Assistant, Shannon Robinson, 801-524-6568
- Law Clerk, John Straley, 801-524-6569

Chambers staff are not permitted to give legal advice.

Faxes are not permitted but email is permitted if permission is granted.

Scheduling and calendar matters

A. General Scheduling Procedure

To schedule or to strike a hearing before Judge Mosier, please contact the Scheduling Clerk, Judianne Genovese, at 801-524-6627.

B. Law and Motion Calendar

Each chambers typically reserves one day a week for motions requiring five minutes or less of hearing time ("law and motion calendar"). The Court schedules these matters in three general categories: (1) preliminary hearings on motions for relief from the automatic stay; (2) objections to claims; and (3) other routine matters where no opposition is anticipated. Examples of routine matters appropriate for the law and motion calendar include motions to amend a chapter 13 plan, objections to trustee's motion to dismiss, motions to incur debt, and motions to sell property. Parties should not request time on the law and motion calendar if they believe that a hearing will take more than five minutes. Instead, parties should schedule a lengthier hearing on another day.

C. Chamber Presets

ECF attorney filers ("ECF Filer") can obtain certain preset hearing dates on the "law and motion calendar" without calling the court. The preset hearing dates are posted to a report within CM/ECF (Chamber Presets). ECF Filers will find the Chamber Presets under the Reports menu in the CM/ECF database. Preset Guidelines for each chambers are posted on the Chamber Presets page. ECF Filers should review and comply with the Preset Guidelines for the types of hearings allowed and other restrictions prior to selecting a hearing date. If an ECF Filer does not comply with the Preset Guidelines the preset hearing may be stricken by the Court. Once a preset hearing time has been selected, the ECF Filer should promptly docket a notice of hearing in order to save their selected preset date and time.

D. Chapter 13 Confirmation Hearings

Each chambers reserves several days a month to conduct chapter 13 confirmation hearings. If, in preparing for a confirmation hearing, the Court concludes that no objections have been filed and no concerns remain, the Court may strike the scheduled confirmation hearing and issue an order confirming the plan. Occasionally the Court may have independent concerns regarding a confirmation hearing even though no objections have been filed and the chapter 13 trustee's concerns have been resolved. In that event, the confirmation hearing will go forward and parties will be required to appear. Chambers staff are not permitted to answer questions as to the Court's concerns.

E. Notice

Each chambers requires that motions filed with the Court comply with the notice requirements of the Bankruptcy Code, the Bankruptcy Rules, the Official Forms, and the Local Rules of this Court. The Local Rules are available on this Court's website at https://www.utb.uscourts.gov/local-rules-and-orders/ [3]. Generally, none of the judges will consider motions filed without notice to the opposing party. There are a few exceptions such as motions for orders to shorten or extend time or motions to appear telephonically. The Court may grant motions to shorten the notice period required for a particular motion. These motions may be filed without notice to parties in interest and are granted at the Court's discretion. Note: Even if the Court grants a motion to shorten time, parties are expected to send a separate notice of hearing to those entitled to receive notice.

F. Evidentiary Hearings

Any matter to be heard before this Court where any party anticipates presenting evidence should clearly state in the notice of hearing or objection to the requested relief, that the hearing will be an evidentiary hearing. Failure to do so may result in the Court not allowing evidence to be presented. Parties are also directed to the other Practices and Procedures on this page for other requirements for scheduling and giving notice of hearings.

G. Striking Hearings

When appropriate, parties are encouraged to strike hearings and, pursuant to Local Rule 9013-1(c), request relief without a hearing. Parties should notify the Court at least two days prior to the scheduled hearing if they wish to strike a hearing.

H. Ex Parte Motions for Temporary Restraining Orders

Each chambers will consider ex parte motions for temporary restraining orders. Ex parte motions seeking a temporary restraining order must be filed in accordance with the Federal Bankruptcy Rule 7065. Parties seeking this relief must also contact Chambers to schedule a meeting with the Judge in Chambers to explain the motion and address other concerns the Judge may have. No ex parte order for a temporary restraining order will be considered without compliance with this practice and procedure.

Appearances

A. Appearances in St. George

Cases originating with debtors located in southern Utah are assigned to Judge Thurman. At least once a month, Chief Judge Thurman travels to St. George to hold hearings for these cases. Parties should contact the Scheduling Clerk, Judianne Genovese at 801-524-6627 to schedule hearings for the Court's St. George calendar. Some hearings may be held by videoconferencing with Chief Judge Thurman sitting in Salt Lake City.

Chief Judge Thurman will not receive evidence via videoconferencing. Parties appearing for the St. George calendar who believe that they will be submitting evidence should contact chambers to schedule a hearing when Judge Thurman is in St. George.

B. Telephonic Appearances

Each chambers allows parties to appear telephonically at its discretion. Parties wishing to appear telephonically at an upcoming hearing should contact chambers and obtain permission in advance. The Court may require a motion and order allowing a party to appear telephonically. The Court will not allow parties appearing telephonically to present evidence or to examine witnesses. Parties appearing telephonically may state their positions and conduct oral argument only.

Submission of Orders

- **ALL ORDERS FILED WITH THE COURT TO BE SIGNED BY THE COURT, MUST CONTAIN A 'DESIGNATION OF PARTIES TO BE SERVED' PURSUANT TO LOCAL RULE 9021-1(e).**

- **Proposed orders must be submitted electronically and must have a top margin of not less than 2-1/2 inches on the first page, adhering to Loal Rule 5005-3. Pro Se debtors must file their proposed orders via mail or over the counter and also adhere to Local Rule 5005-3.**

- **Proposed orders are not to be attached to motions / applications or objections.**

Motions for Relief from the automatic stay

A. Scheduling

Each Judge holds preliminary hearings on motions for relief from stay on a regularly scheduled day. Please refer to Sections II. B. and C. above.

B. Drafting Issues

As part of its review process in connection with filed motions for relief from stay, the Court looks for compliance with the following requirements:

1. All motions for relief from stay should have the following:

   a. Motion for relief from stay (Local Rule 4001-1(a));
   b. Notice of hearing (Local Rule 4001-1(a), notice must substantially conform to Utah form 9013-1 or 9013-2);
   c. Certificate of service (Local Rule 9013-1(g), the certificate may be attached to the papers that are served or may be filed separately); and
   d. Optional: A supporting memorandum may also be filed (Local Rule 9013-1(d)).

2. The motion and/or memorandum should state sufficient grounds for relief under Section 362(d). If one of the grounds for relief is lack of equity, then the movant should identify the current amount of the lien (and amount of any other known liens against the property), the estimated value of the property subject to the lien, and how that value has been determined. If the movant is asserting that it is not adequately protected, please specify why not. **Do not simply assert that the debtor lacks equity in the property or generally claim that you are not adequately protected.** Such statements do not give the Court the basis to grant the requested relief, even if uncontested. Failure to comply with this procedure may result in the motion being denied without prejudice.

3. **The motion and/or memorandum should attach suitable evidence that a lien is perfected pursuant to state law.** If the underlying obligation has been assigned to the movant, evidence of the assignment should be provided.

C. Relief Without Hearing

If no objection to the motion is timely filed, the hearing may be stricken and an order for relief submitted pursuant to Local Rule 4001–1(c). **A request to strike the hearing should be made at least two days prior to the hearing.**

D. Preliminary Hearings

Unless otherwise ordered by the Court, the originally scheduled hearing will always be conducted as a preliminary hearing. At this preliminary hearing, detailed offers of proof should be used but no live witnesses. The Court will set the matter for a final evidentiary hearing only if the offers of proof demonstrate a genuine issue of material fact. Do not assume that you can make general statements of what you hope you can prove by the time of a final hearing or the motion may be denied at the preliminary hearing.

E. Final Hearings

A party may request a final hearing on a motion for relief from stay, instead of a preliminary hearing, by contacting the Scheduling Clerk, Judianne Genovese at 801-524-6627. If a party requests that the hearing on the motion for relief from stay be conducted as a final hearing, the notice of hearing must clearly state that the hearing will be conducted as an evidentiary hearing. Failure to do so may result in the Court not allowing evidence to be presented.

The Court, on its own initiative, or at the request of the parties, may enter a scheduling order regarding preparation for and the conduct of the final hearing.

Common mistakes to avoid at or prior to the final hearing:

- Failure to exchange exhibits and witness lists with opposing party/counsel prior to the hearing.

- If the Court orders that Federal Rule of Bankruptcy Procedure 7026 applies to a motion for relief, parties should identify expert witnesses, and tender a list of the expert’s qualifications and a written summary of the expert’s expected testimony and opinions. Failure to comply with Federal Rule of Bankruptcy Procedure 7026(a)(2) may result in your inability to use any expert at the final hearing (if such a hearing is required).

- Relief from stay proceedings are "summary proceedings" in nature. While you need to present detailed offers of proof, keep in mind that the Court will not "finally determine" any of the factual issues raised. It will only make summary determinations as to whether the statutory grounds for relief have been satisfied.

G. Policy on Waiving Federal Rule of Bankruptcy Procedure 4001(a)(3) Stay of Order

The Court will not waive the 14-day stay of an order granting a motion for relief from the automatic stay as provided for in Federal Rule of Bankruptcy Procedure 4001(a)(3) as a matter of course. Granting this relief as a matter of routine without a stated basis is inappropriate.

Creditors seeking to shorten or eliminate the 14-day stay of order pursuant to Federal Rule of Bankruptcy Procedure 4001(a)(3) should include in their motions a concise statement of the basis for shortening or eliminating the stay.

Chapter 13 confirmation hearings

A. Procedure for asserting a substantial change in circumstances under In re Lanning, 130 S.Ct. 2464 (2010).

If a party in interest files an objection to confirmation of a chapter 13 plan asserting that an above median debtor is not paying all monthly disposable income to unsecured creditors, and the debtor intends to assert that a substantial change in circumstances has occurred such that the debtor's projected disposable income should not be calculated using the monthly disposable income set forth on Official Form 22C, the debtor must file and serve a response to such an objection prior to the confirmation hearing. The response may be accompanied by the debtor's affidavit, but the debtor must also appear at the confirmation hearing to provide evidence to support the response. The objection and response will be heard at the confirmation hearing.

B. Procedure when the debtor proposes in the chapter 13 plan to file an adversary proceeding to strip a lien on the debtor's real property that the debtor asserts is wholly unsecured.

If a chapter 13 debtor proposes to eliminate a monthly mortgage payment and/or a prepetition mortgage arrearage by attempting to strip an allegedly wholly unsecured lien against the debtor's real property in order to make the plan feasible, the adversary proceeding must be filed and the summons issued prior to the first date fixed for confirmation of the debtor's chapter 13 plan.

Chapter 13 attorney Fees**Chapter 13 attorney fees:**

A. Presumptive Fees.*

For all chapter 13 cases filed after November 30, 2010, presumptive fees for debtor's counsel will be as follows:

1. Upon confirmation of a chapter 13 plan:

    $3,000.00 - in below median income cases with $150/mo payments for 36 months or less
    $3,250.00 - in all other below median income cases
    $3,500.00 - in above median income cases

The presumptive fee shall provide compensation for legal services through (1) Chapter 13 plan confirmation; (2) the claims review process that does not result in an actual contested hearing; (3) certification of the debtor's completion of the postpetition instructional course concerning personal financial management; and (4) the final certification of readiness for discharge.

The presumptive fee is conditioned on counsel's timely performance of services including timely responses to objections to confirmation. The Court retains discretion in all cases to determine the appropriate award of fees and may award fees in an amount less than the presumptive fee if counsel

fails to provide timely and competent services.

2. Upon dismissal a presumptive fee may be awarded up to $2,750.00.

3. Presumptive fee for administrative abatements may be allowed in the amount of $150.00.

B. Fees in Excess of or in Addition to Presumptive Fees.*

If debtor's counsel seeks fees in excess of or in addition to the presumptive fee, counsel must file a fee application requesting such fees.

*For a more detailed discussion of presumptive attorneys' fees in chapter 13 cases see this Court's Memorandum Decision on Attorneys' Fees in Chapter 13 Cases, Miscellaneous Case No. 06-50001, dated March 22 2006.

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