

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

IN RE:)	
)	
PROCEDURES IN AID OF MOTION)	GENERAL ORDER
PRACTICE (NON-ADVERSARY))	SETTING PROCEDURES TO BE
BEFORE THE BANKRUPTCY COURT)	FOLLOWED IN ALL MOTIONS FILED
)	AFTER ENTRY OF THIS ORDER

GENERAL ORDER 07-03

The court, having concluded that the following new procedures are needed to implement a motion practice that both affords adequate notice to litigants and that disposes of pending motions before the court in an expeditious manner, hereby ORDERS that with respect to all motions filed after the entry of this General Order, the following procedures shall be adopted:

(A) Motions Covered

For the purposes of this General Order, a "motion" filed in a case shall include any motion, application, notice, any other request for relief from the court, or any proposed action to be taken under the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, or Local Bankruptcy Rules. The definition of "motion" shall not include a petition for relief under the Bankruptcy Code, a proof of claim or an objection to a proof of claim, or any proposed order submitted to the court. Any letter that is received by the court may, but need not be, considered as a motion by the court.

(B) Form of Motion

All motions, unless made in open court during a hearing, shall be in writing and filed with the clerk. All motions shall state with particularity the grounds for the relief requested in separately numbered paragraphs and shall be signed by the movant or the movant's counsel. Multiple requests for relief in a single motion may be allowed for filing purposes if those requests are based on identical facts or arise out of the same transaction. Multiple requests for relief not based on identical facts, or not arising out of the same transaction, shall be filed in separate documents. Authorities and arguments may be briefed in a motion. A motion will not be accepted by telephone or facsimile without the consent of the judge or his designee.

A proposed order should accompany the motion, which if entered, would grant the relief sought in the motion. Such orders should state the name of the person or entity that prepared the order.

(C) Supporting Documentation

1. Generally

When allegations of facts on which a motion relies do not appear in the record, the source for those allegations of fact should be stated in the motion. Affidavits and supporting documentation evidencing facts that are not contained in the record are encouraged, but not required. If the affidavits and documents are not available at the time of the filing of the motion, then the moving party may move for an extension of time for filing affidavits and documents in accordance with subsection (H).

2. Motions to Lift Stay

Notwithstanding the foregoing, the court may, in its discretion, deny any creditor's motion for relief from stay in connection with real or personal property that is not accompanied with copies of all applicable documents evidencing the related indebtedness and perfected lien status, unless such documents have already been filed in connection with another motion in the case, in which event a specific reference should be made to the motion to which such copies are attached.

(D) Service

This General Order is neither intended to supercede, nor to be a substitute for the Federal Rules of Civil Procedure, or the Federal Rules of Bankruptcy Procedure. In addition to the requirement for service found in the Federal Rules of Bankruptcy Procedure, all motions shall be served on the debtor and the attorney for the debtor, as applicable.

When the requirement exists that service be made on the entire creditor body, the certificate of service may recite service on "all creditors listed on the mailing matrix on file in the Bankruptcy Clerk's Office as of (date)." A certificate of service shall be utilized when required. (See N.D. W. Va. L.B.R. 5005-4.10).

(E) Response; Time for Response

Any party with standing may file a written response to the motion. The response may, but need not, be accompanied by affidavits and other supporting documents. A response, if any, to a motion shall be filed within 20 days from the date of the filing of the motion, or 3 days before the date of the hearing on the motion, whichever is earlier, unless otherwise provided in the Federal Rules of Bankruptcy Procedure.

On motion to the court, the court may enter an ex-parte order enlarging the time period to file a response.

(F) Response Times for Motions for Relief from the Automatic Stay

Notwithstanding the 20-day response period provided in subparagraph (E), a response to a motion for relief from the automatic stay, if any, shall be filed within 15 days from the date of the filing of the motion, or 3 days before the hearing on the motion, whichever is earlier.

(G) Content of Response

All responses shall contain sufficient information to reasonably disclose the basis for the party's position and what specific issues are contested. A response may, but is not required to, contain affidavits and documents evidencing the facts stated in the response that do not appear in the record. If such affidavits and documents are not available at the time of the filing of the response, then the responding party may move for an extension of time for filing affidavits and documents in accordance with subsection (H).

If a response is not in compliance with this provision, the court, in its discretion, may resolve the matter based on the moving party's submissions without a hearing, or take other action as the court may deem appropriate.

(H) Extension of Time for Filing Supporting Affidavits and Documents

Upon proper motion accompanied by a proposed order, the court may enter an ex parte order specifying the time within which supporting affidavits and documents must be filed, as applicable, pursuant to subsections (C) and (G), if it is shown in writing that such affidavits or documents are not available or cannot be filed contemporaneously with the motion or response. The time allowed to an opposing party for filing a response, as applicable, shall not begin to run until the expiration of such extended time period.

(I) Memorandum of Law

Unless otherwise ordered by the court, all briefs or memoranda of law either in support of the motion or in opposition thereto are optional and are not required. Any filed memorandum must be submitted at least 3 days before the hearing if one is set by the clerk's office, unless otherwise allowed in the discretion of the court.

(J) Hearing on Motion / Relief Without a Hearing

The clerk shall set all hearing dates. IN THE ABSENCE OF A TIMELY FILED

WRITTEN RESPONSE TO A MOTION, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT THE NEED FOR A FURTHER HEARING.

The court, in its discretion, may set any motion for hearing even in the absence of any filed objections. Any party that intends to appear at the hearing to object should endeavor to file a written objection with the court at least three days before the scheduled hearing.

(K) Shortening Objection Periods

A moving party may request that the court shorten the applicable period to object to a prescribed action by filing a motion with the court that states the necessity for shortening the objection period, and the proposed deadline for filing an objection to the action prescribed in the underlying motion. If the movant requests that notice be shortened to less than ten days, then the movant should follow the procedures for requesting emergency relief in subsection (L), below. It is the responsibility of the moving party to contemporaneously serve both (a) the motion to shorten time to object, and (b) the motion seeking the underlying prescribed relief.

The court, in its discretion, may grant ex-parte relief shortening the applicable objection period, and/or may set the motion for a hearing on an expedited basis. Immediately upon receipt of the order shortening time and/or setting the hearing, the movant shall serve the order.

(L) Emergency Relief

When the moving party requests that the court shorten the applicable period to object to a prescribed action to less than ten days, then the movant shall file with the court a motion for emergency relief. The motion for emergency relief shall plainly state the necessity for the objection period to be shortened to less than ten days. It is the responsibility of the moving party to contemporaneously serve both (a) the motion to shorten time to object, and (b) the motion seeking the underlying prescribed relief, which, if possible, should be served contemporaneously with the motion for emergency relief. Every effort must be made by the moving party to timely serve both motions, and, where appropriate, the motions should be transmitted to all applicable parties either by hand delivery, overnight delivery, facsimile, or other electronic transmission.

The court, in its discretion, may grant ex-parte relief shortening the applicable objection period, and/or may set the motion for a hearing on an expedited basis. Immediately upon receipt of the order shortening time and/or setting the hearing, the movant shall serve notice of the hearing in a like manner and file with the court a certificate of service. In instances where service of the

motion for an emergency hearing, the motion seeking the underlying relief, and the order granting the emergency motion to shorten time, as applicable, may not provide sufficient time for parties in interest to respond or appear, counsel shall telephonically provide notice of the emergency hearing as soon as practicable, and reflect the same in the certificate of service.

(M) Conflicts

To the extent that any other previously entered General Order or Local Rule conflicts with this General Order, the terms of this General Order shall prevail.

ENTERED:

Pat M. Flatley 4-23-07

PATRICK M. FLATLEY (Date)
United States Bankruptcy Judge