

# Judicial Procedures Survey for the Honorable Dennis Montali

In 2014, the Bench-Bar Liaison Committee generated a survey of the Northern District Bankruptcy Judges. The questions focused on various practice procedures utilized by the judges and the questions and responses were printed out in a black notebook. The following is an effort to update and the responses from 2014. We have surveyed the judges in response to a series of questions divided up into different topics. Each judge's responses to the survey are posted online in the section specific to that judge. In the event of any conflict between the judge's responses to the survey and his or her posted procedures and practice, the posted procedures and practice, as well as the local rules will control.

## I. Calendar Hearings

1. May parties and attorney contact the judge's staff to request the Court to specially set a date and time for a longer hearing?

Yes. Contact the Courtroom Deputy/Calendar Clerk: Ms. Lorena Parada, 415.268.2323 or [lorena\\_parada@canb.uscourts.gov](mailto:lorena_parada@canb.uscourts.gov).

2. What types of matters, if any, are set by the Court and not by the self-calendaring method?

Hearings on confirmation of Ch 11 Plans (except Sub- V), trials and similar proceedings involving witness testimony.

## II. Emergency Matters & Applications for Orders Shortening Time for Hearing

1. Does the judge allow hearings on an emergency basis (less than 48 hours' notice)?

Yes – Ch 11 First Day motions (no OST required)

TROs are generally heard on at least 72 hours notice (no OST required) – However all papers must be served on defendant prior to hearing.

All other matters require an OST and compliance with B,L,R, 9006-1(c).

2. If so, who is the point of contact for arranging for consideration of emergency motions?

Ms. Lorena Parada, 415.268.2323 or [lorena\\_parada@canb.uscourts.gov](mailto:lorena_parada@canb.uscourts.gov).

3. Will the judge calendar a hearing on an emergency motion prior to receipt and review of moving papers?

Yes, subject to the filing and serving those papers; however, parties should strive to file underlying papers prior to seeking an OST.

4. For emergency motions or hearings on shortened time, does the judge require delivery of a copy of the moving or responding papers to chambers?

Not specifically, but copies are appreciated, especially those that include lengthy exhibits.

5. Will the judge act on emergency motions without requiring notice to any party whatsoever?

Only in extreme cases and where the Bankruptcy Code or Rules (e.g. FRBP 4001(a)(2)) permit such action.

6. Does the judge require declarants to be present at the hearing on emergency motions?

No

7. Does the judge always require some notice to another party pursuant to B.L.R. 9006-1(c) (4) before granting an application for order shortening time for hearing?

Yes, as required by B.L.R. 9006-1(c)

8. Will the judge grant orders shortening time for hearings (other than emergency matters) upon a showing of good cause?

Yes, provided the requesting party complies with B.L.R. 9006-1.

9. Does the judge routinely grant orders shortening time for hearings on the following matters?

- a. Relief from stay motion in residential unlawful detainer cases — **Yes**

- b. Sales of property — **OST, if cause shown**

- c. Applications for temporary restraining orders — **Yes**

- d. Bidding procedures for section 363 sales — **OST, if cause shown.**

- e. Other matters (please specify) — **Most other matters for good cause shown or stipulation of the parties.**

### III. Hearings & Telephonic Appearances

1. Does the judge conduct hearings in person, via Zoom, or telephonically?

Yes: See Zoom and AT&T dates as posted on the calendar section of court's website. After September 1, 2023, in court for evidentiary hearings. See posted notice re SF Division live hearings.

2. What matters, if any, require a specific type of appearance?
  - a. Disclosure Statement & Confirmation Hearings — **Zoom or telephonic, counsel and client required to be present.**
  - b. In-Person Evidentiary Hearings — **In person, beginning September 1, 2023. See posted notice re SF Division live hearings**
  - c. Other matters (please specify) — **When client is present in court.**

3. Will the judge consider priority requests from counsel at the time of calendar call?

Yes

4. Does the judge hear stipulations and uncontested matters and requests for continuances before hearing opposed matters?

If counsel has notified the courtroom deputy in advance.

5. If the judge conducts evidentiary hearings by video, does the Court conduct a “dry run” technology trial prior to the actual hearing?

No, but counsel may contact chambers to arrange to test: Ms. Lorena Parada, 415.268.2323 or [lorena\\_parada@canb.uscourts.gov](mailto:lorena_parada@canb.uscourts.gov).

6. Under what circumstances, if any, does the judge permit witness testimony by video?

See III, 1, above.

#### IV. Processing Orders

1. Does the judge require an order to be approved as to form by opposing parties prior to being submitted?

Either approved as to form or served in accordance with B.L.R. 9021-1(c).

2. If not, does the judge lodge an order for 7 days under B.L.R. 9021-1 (c)?

The rule says that orders not approved as to form will “ordinarily” be lodged for seven days. This judge “ordinarily” signs orders sooner, so any objections as to the form of order should be communicated as soon as possible. See next answer.

3. What procedure does the judge prefer if there is an objection to the form of order that cannot be resolved by the parties?

- a. File a formal objection — **If objection is filed, objector should notify courtroom deputy, Ms. Lorena\_Parada, 415.268.2323 or [lorena\\_parada@canb.uscourts.gov](mailto:lorena_parada@canb.uscourts.gov).**

- b. Letter to the judge setting forth the objection — **OK. Objector should send e-mail to courtroom deputy with cc to opposing party, explaining the objection. Court will normally resolve the dispute or schedule a conference call.**
  - c. Contact the judge's clerk to set up a conference call — **Option b is preferred.**
  - d. Other procedure (please specify) — **Option b is preferred.**
4. If a large number of parties are entitled to receive notice of entry of an order signed by the judge, what procedure does the judge use to accomplish service of notice of entry of that order?

ECF, but counsel will be required to serve by mail if more than twenty-five parties will be receiving notice via BNC.

5. How long should counsel or parties wait before contacting the judge's staff regarding the status of a lodged order?

Seven days

6. Does the judge permit attorneys and parties to communicate with the law clerk regarding rejected proposed orders?

No, but send e-mail to *Montali\_Orders@canb.uscourts.gov*.

## V. Judge's Copies of Filed Documents

1. Does the Court require paper copies of pleadings filed in the case?

No, unless requested by chambers staff.

2. Are there exceptions to this rule, e.g. relief from stay motions?

See above

## VI. Communications with Judge's Staff

1. Does the judge allow attorneys and pro per parties to communicate with the judge's courtroom deputy regarding:

a. Scheduling matters — **Yes.**

b. Status of orders — **Only when order has been submitted more than 7 days via *Montali\_Orders@canb.uscourts.gov*.**

c. Other matters (please describe) — **Stipulated continuances; discovery disputes; Whenever required otherwise, such as the three-day notices in B.L.R. 3017-1 (b) and 3020-1(c) or in the Judge's Trial Scheduling Order.**

2. Does the judge permit attorneys and pro per parties to communicate with the judge's law clerk regarding:
  - a. Scheduling matters — **No**.
  - b. Status of orders — **No**.
  - c. Other matters (please describe) — **No**.

## VII. Status Conferences

### Chapter 11 Cases:

1. Are status conferences held in Chapter 11 cases?

Yes. A Notice of Chapter 11 status conference is generated at case opening and served on all creditors.

2. Are status conference statements required?

Yes

3. Are the required contents of the statement set forth in the judge's order setting the status conference?

Yes

4. Is the debtor or debtor's responsible individual required to appear at the status conference?

Yes

5. Will the judge set plan filing deadlines at the status conference?

Deadlines will be discussed in regular Chapter 11 cases. In Sub V cases, the court expects counsel to set hearing on confirmation within the deadline in the statute and via the self-calendaring procedures.

6. Can the status conference be continued? If so, what is the preferred method for doing so?

Because the status conference is noticed to all creditors, continuances in advance are not normally permitted.

7. Does the judge impose sanctions for failure to file the status conference report?

No hard and fast rule. The court always expects counsel to abide by rules and procedures so the question of sanctions should never arise.

8. Is a scheduling order prepared after a status conference when the judge sets a plan and disclosure statement deadline and if so, who prepares the order?

Normally handled by docket entry unless the continued date will coincide with normally noticed hearing such as confirmation of a plan.

### **Adversary Proceedings:**

1. Are status conference statements required? If so, when are they due?

No

2. Are the required contents of the statement set forth in the judge's order setting the status conference?

N/A

3. Does the judge impose sanctions for failure to file the status conference statement?

N/A

4. Is the represented party required to appear at the status conference?

No

5. Will the judge set a trial date at the status conference?

Depends on the circumstances of the case, but not. Normally at the first Scheduling Conference.

6. Does the judge require the parties to file a discovery plan?

The court expects counsel to adhere to the procedures in FRBP 7026

7. Can the status conference be continued? If so, what is the preferred method for doing so, and what, if any, deadlines apply?

If the parties stipulate to a continuance they should select a new date on the open calendar, plaintiff should notify the courtroom deputy by e-mail at least two days prior to the scheduled date and promptly file a stipulation showing the agreed continued date and time. This procedure may be utilized only twice in any particular adversary proceeding.

## **VIII. Relief from Stay Motions**

1. Are appearances required if there is a statement of non-opposition from the debtor and trustee?

Moving party should e-mail the courtroom deputy and ask that the matter be dropped then serve and upload an order.

2. Will the Court hear testimony at a final hearing?

Not normally, but see operative all-purpose Trial Scheduling Order for the particular case.

3. Does the judge grant ex parte relief from stay in unlawful detainer cases?

If ex parte means without notice, then only if FRBP 4001 (a)(2) would apply. If ex parte means on shortened time, yes.

4. Does the judge have special procedures for handling residential relief from stay motions? What are they?

No

5. Does the judge allow shortened notice on motions for relief from stay where there is proof of any of the following:

a. A prior unlawful detainer judgment — **Yes, as long as B.L.R. 9006-1 followed.**

b. A prior adequate protection order — **Yes, as usually the APO permits expedited consideration following default without further notice or a hearing.**

c. Multiple bankruptcy filings — **Yes, as long as B.L.R. 9006-1 followed.**

d. Other conduct constituting bad faith — **Yes, as long as B.L.R. 9006-1 followed.**

e. A Chapter 13 confirmation hearing is already scheduled — **Yes.**

f. Other (please specify) — **When good cause shown, and B.L.R. 9006-1 followed.**

6. Will the judge hear relief from stay motions on shortened notice in non-residential unlawful detainer cases?

Yes

7. Does the judge require declarants to be present for a final (evidentiary) hearing on motions from relief from the automatic stay?

Yes, unless the other side consents or has otherwise waived the right to cross-examine. See operative all-purpose Trial Scheduling Order for the particular case.

8. Upon an appropriate evidentiary showing, will the judge award prospective relief from stay effective for 180 days in future bankruptcy cases filed by the debtor?

Yes, but only consistent with the words of the statute and applicable case law (see, No. 9, below).

9. Does the judge grant requests for retroactive annulment of the automatic stay?

Yes, but only to an affected creditor. See *Ellis v. Yu*, 523 BR 673 (9th Cir. BAP 2014)

## IX. Motion Practice

1. Does the judge require declarants to be present at the hearing on emergency motions or hearings on shortened time?

No

2. Does the judge require declarants to be present at the hearing on regularly scheduled motions?

Normally evidence is not taken on motion calendar, so declarants' presence not required.

3. Does the judge require written evidentiary objections to be made in a separate document?

Yes

4. Can a party continue a motion on its own?

Moving party may continue a motion by filing and serving a notice of continued hearing at least 48 hours prior to the scheduled hearing.:

5. Can a hearing on a motion be continued by stipulation?

Yes. If the parties stipulate to a continuance they should select a new date on the open calendar, then the moving party should notify the courtroom deputy by email at least 48 hours prior to the scheduled date and promptly file a stipulation showing the agreed continued date and time.

6. Does the judge allow true ex parte relief (without notice to the opposing party) when issuing temporary restraining orders?

FRCP 65(b), incorporated by FRBP 7065, applies and describes when a TRO may be issued without notice.

7. If not, what notice does the judge require?

Response: Normally 48 hours notice is required for an application for a TRO.

## X. Proof of Service Requirements

1. Will the judge deny motions for failure of the moving party to prepare and timely file a proof of service which complies with all of the requirements of B.L.R. 9013-3?

Yes

2. Will the judge continue motions to allow movant to provide proof of service?

Yes

3. Does the judge deny motions for failure to identify on the proof of service the capacity in which parties have been served as required by B.L.R. 9013-3(b)?

Not normally, but the better practice is to comply in order to avoid the embarrassing, though infrequent, denial for that reason.

## **XI. Continuances**

1. Does the judge allow for continuances of motions other than by noticed motion or written stipulation?

Yes

2. Does the judge allow stipulated or unopposed oral requests for continuances?

Yes

3. Does the judge allow continuances of trial dates by stipulation of the parties?

Yes, except in unusual circumstances.

4. Does the judge allow continuances of disclosure statement hearings or confirmation hearings by stipulation of the parties?

Yes, but since the hearing is noticed, continuances in advance are not normally permitted.

## **XII. Discovery Disputes**

1. Does the judge require a noticed motion in order to hear a discovery dispute?

No

2. Does the judge resolve discovery disputes by conference calls?

Yes. They should be arranged through the courtroom deputy, who will expect an e-mail from the requesting party, with cc to the opposition, outlining briefly the nature of the dispute, followed by email from the opposing party.

3. Does the judge hear discovery dispute motions without full compliance with the requirements of Civil Local Rule 37 (a)(1)?

Yes

4. Does the judge mandate strict compliance with the Civil Local Rule 37 (a)(1) requiring that the parties to a discovery dispute to meet and confer?

Yes

5. Does the general discovery cut-off date include disclosure of expert witnesses?

Yes

### **XIII. Discovery Cut-Off Date**

1. Does the judge typically set the discovery cut-off date at the first status conference?

No, except when the trial date is set at that conference.

2. Will the judge approve a stipulation to extend discovery cut-off date if it does not interfere with the Trial Setting Conference?

Yes

3. Does the judge strictly enforce a discovery cut-off date absent unreasonable conduct by the opposing party?

Yes, but the parties may extend that date by written stipulation.

4. What is the deadline for holding a hearing on a discovery dispute motion?

Too vague to answer; case specifics will dictate.

### **XIV. Conversion & Rule 2004 Motions**

1. What is the minimum amount of notice the judge requires for a FRBP 2004 Examination?

Normally 14 days

2. Does the judge sign orders on initial motions to convert the case from Chapter 7 to Chapter 11, 12 or 13 or from Chapter 11 to Chapter 7 without a hearing?

B.L.R. 1017-1 applies on most conversions from 7 to 13. No hearing required for voluntary conversion to Ch 11 or 12. Voluntary conversion from Ch 11 to Ch 7 does not require a hearing except as set forth in section 1112(a)(1)-(3).

3. Does the judge rule on motions under FRBP 2004 without a hearing?

Yes

4. What procedures does the judge require in order for a party to object to a 2004 exam or the documents demanded as part of the 2004 exam?

Treated as a discovery dispute. See XII above. Parties to meet and confer, then set up telephone conference through courtroom deputy.

5. Does the judge require meet and confer efforts before a motion for protective order has been filed regarding a FRBP 2004 examination?

Yes

## XV. Consumer Cases

1. Does the judge require hearings on reaffirmation agreements if the party is represented by counsel and counsel has certified that the party has the ability to meet the obligations of the agreement, despite the presumption of undue hardship?

Not normally.

2. Does the judge require pre-hearing statements prior to contested Chapter 13 confirmation hearings? If so, does the judge prefer a joint statement?

Yes to both questions

3. At relief from stay hearings does the judge:

- a. Consider a requested waiver of the Rule 4001 stay? — **Normally, if requested and not specifically opposed.**
- b. Allow a three strikes provision that allows automatic relief from stay if a debtor is late on three payments? — **Normally, if requested.**

## XVI. Chapter 11 Procedures

1. How does the judge prefer that parties obtain a hearing date for first-day motions?

Contact courtroom deputy

2. Does the judge require an application to shorten time pursuant to B.L.R. 9006-1 for first day hearings?

No

3. What form of notice (email, telephone, overnight carrier, US Mail, etc.) does the judge typically require for the hearing on first day motions?

Overnight carrier and email to UST, Twenty largest creditors, any affected secured creditors, and any party who has requested notice.

4. Does the judge prefer that a party use the combined model plan and disclosure statement for individual Chapter 11 cases?

Yes

5. Does the judge allow less than 35 days' notice of the hearing on a disclosure statement?

For preliminary approval of Combined Plan and Disclosure Statement: 14 days electronic service Otherwise, request OST to shorten the regular 35 days

6. Will the judge allow shorter notice for confirmation hearings?

Yes. Take it up with court at the Disclosure Statement hearing. In Sub V, file separate request for OST and lodge proposed order.

7. Under what, if any, circumstances does the judge allow a fast-track procedure involving preliminary review and conditional approval of disclosure statements without a hearing, or on limited notice/shortened time?

Regularly when using the Combined Plan and Disclosure Statement. See above and posted Practices & Procedures re this question..

8. Does the judge allow the plan and disclosure statement be combined into a single document in Chapter 11 cases that are not small business Chapter 11 cases?

Yes

9. Can the plan proponent submit evidence supporting plan confirmation by offer of proof or by pre-hearing submission of a declaration?

Yes, particularly if there are no objections to confirmation.

10. Does the judge require a declarant in support of confirmation be present at the hearing if confirmation is not contested?

No.

11. Does the judge prefer the bar date for administrative claims be in the plan, in the order confirming the plan or does the court set such date by separate order?

Order confirming plan or by separate ex parte request and proposed order.

12. Will the judge consider critical vendor motions in Chapter 11 cases? If so, under what circumstances?

When the creditors are genuinely "critical".

13. Does the judge regularly grant motions to limit notice of motions in Chapter 11 cases?

Yes

14. What motions/hearings (other than Plan Confirmation) does the judge require to be excluded from limited notice?

Where the rules do not require notice to all creditors.

## XVII. Default Judgment

1. Does the judge require evidence in support of a motion for default judgment?

Yes, but it can be by properly authenticated, admissible declarations,

2. Does the judge require a hearing on a motion for default judgment?

Depends upon the nature of the matter, best to set the motion as a motion for summary judgment.

3. If so, does the judge require 28 days' notice of such a hearing?

See No. 2, above.

## XVIII. Trial Procedures

1. Does the judge have mandatory trial procedures in addition to requirements under the Bankruptcy Local Rules?

See the all-purpose Trial Scheduling Order that has been issued in the particular case.

2. If so, how are these procedures obtained?

See above

3. When are trial dates set by the judge?

Normally at the Scheduling Conference.

4. Does the judge hold pre-trial conferences and if so, when are those held relative to the trial date?

No normally, but in appropriate cases when discussed at the Trial Scheduling Conference.

5. Does the judge require direct testimony from witnesses in a party's control to be presented by declaration?

See all-purpose Trial Scheduling Order for the particular case. Normally declarations required by expert witnesses but not permitted with percipient witnesses, except via specific stipulation. See next answer..

6. If not required, under what circumstances does the judge permit direct testimony from witnesses in a party's control to be presented by declaration upon the request of the parties?

Where there is consent by any party who would otherwise be entitled to cross-examine the declarant.

7. Does the judge have published procedures regarding the exchange of declarations in advance of trial?

See all-purpose Trial Scheduling Order.

8. Does the judge require parties to present written evidentiary objections to trial declarations and exhibits of the opposing party in advance of trial?

See Trial Scheduling Order

9. Does the judge require the exchange of witness lists before trial?

See Trial Scheduling Order

10. Does the judge require the submission of bench copies of the exhibits before trial?

See Trial Scheduling Order

11. How are the judge's special procedures for presentation of exhibits in the judge's courtroom obtained?

See Trial Scheduling Order

12. Does the judge have any deadlines for bringing motions in limine? If so, when are they set?

See Trial Scheduling Order

13. Does the judge allow continuances of a trial by stipulation of the parties?

Normally

## **XIX. Settlement & Mediation**

1. Does the judge sua sponte order parties to the court's Bankruptcy Dispute Resolution Program?

No

2. Does the judge use settlement conferences to encourage disposition of adversary proceedings and contested matters?

Yes

3. Does the judge use settlement conferences to encourage disposition of Chapter 11 plan confirmation disputes?

Yes

4. Would the judge act upon request as a settlement judge on the case assigned to him or her as the trial judge?

No