

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

STANDING ORDER FOR CASE ADMINISTRATION FOR AUSTIN DIVISION

New Hearings Procedures for the Austin Division:

Attached to this Standing Order as Exhibit "A" is a copy of the New Hearings Procedures for the Austin Division. In relevant part they provide the following:

1. Continuance of First Meeting of Creditors (All Chapters):

Motions to continue should not be filed. The counsel or pro se debtor may ask the Trustee to call and then continue the meeting at its regularly scheduled time. Only if the Trustee disagrees should a motion for continuance be filed.

2. Excuse of Individual Joint Debtor from First Meeting of Creditors (All Chapters):

Motions to excuse an individual joint debtor from the First Meeting of Creditors should not be filed. As with continuances, counsel or pro se debtor may ask the Trustee to hold the meeting with the remaining co-debtor. Only if the Trustee disagrees to excuse the other co-debtor should a motion be filed.

3. Waiver of Pay Orders (Chapter 13):

Motions to waive pay orders, temporarily or permanently, should not be filed. Only if the Chapter 13 Trustee insists on a pay order at the First Meeting of Creditors should the counsel or pro se debtor file a motion seeking a waiver.

4. Extensions of Time to File Schedules and Statements of Affairs (Chapters 7 and 13):

So long as the debtor complies with B.R. 1007(a)(1) and notwithstanding B.Rule 1007(c), motions to extend time to file schedules, statements of affairs, etc. in Chapters 7 and 13 shall not be required unless the debtor cannot file the same within 20 days of the petition date or 5 business days before the §341 meeting, whichever is earlier. When schedules, etc. are not filed until 5 business days before the § 341 meeting, Debtor's counsel shall deliver to the Trustee a copy simultaneous with their being filed. Any motions which seek an extension, shall state the cause specific to that particular case which justifies the request, or it will be summarily denied. Cause does not include "debtor needs more time" and like generic statements.

5. Settings Procedure (All Chapters):

The court has adopted specific procedures whereby contested matters in all chapters and adversary motions will be set for hearing without a docket call. These procedures are explained in detail in the attached document .

6. Disclosure Statements (Chapter 11):

The court has established specific dates for hearings to approve disclosure statements. However, the setting will all be handled by the clerk's office.

7. Expedited Matters:

Parties seeking to expedite hearings shall still be required to request by separate pleading expedited consideration. Discovery disputes will not be heard at such time.

8. Adversary Proceedings:

The Scheduling Order docketed in the Austin Division has been modified. A copy is attached.

9. Failure to seek Trustee's Permission Prior to Filing Certain Motions:

It is the court's intention to make certain matters easier to handle by counsel, pro se debtors, trustees and staff of the Judge's office and the Clerk's office. Specifically, the first three matters referenced in this Standing Order-Continuance of First Meeting of Creditors, Excusing Individual Co-Debtor from First Meeting of Creditors, and Waivers of Pay Orders, should be brought to the attention of the case Trustee before filing any motion with the court. Such matters may be raised at the First Meeting of Creditors and the Trustee may indicate approval or disapproval by notation in the Meeting Memo that is prepared at each such meeting. If a motion is filed without an indication therein that the debtor has first requested such relief from the Trustee and that the Trustee has denied the request, the Clerk of the Court will route such Motion directly to chambers where it may be dismissed without further notice or hearing.

10. Effective Date:

The effective date of all procedures, which the parties should read and comply with, is December 1, 2000.

11. Notice:

The Clerk of the Court shall send a copy of this Standing Order to all Panel Trustees, the U.S. Trustee and to the President of the Austin Bankruptcy Bar.

DATED: November 15, 2000.

Signed this 15th day of November 2000, by LARRY E. KELLY, CHIEF U. S. BANKRUPTCY JUDGE, LEIF M. CLARK, U. S. BANKRUPTCY JUDGE, RONALD B. KING, U. S. BANKRUPTCY JUDGE, and FRANK R. MONROE, U. S. BANKRUPTCY JUDGE.

EXHIBIT "A"

NEW HEARINGS PROCEDURE -- AUSTIN DIVISION
THE HONORABLE FRANK R. MONROE
(Effective January 1, 1998)
As Amended September 1, 1999
As Amended January 1, 2000
As Amended December 1, 2000

Resetting of First Meeting of Creditors (Chapter 7 and Chapter 13)

Motions to reset the §341 meeting should not be filed. The Trustee shall have the right to approve a reset of the first scheduled 341 meeting for a period not exceeding 15 days or the next available Section 341 meeting. The Debtor will be required to serve a notice of the reset meeting on all creditors and file the notice with the Clerk. Deadlines for filing complaints under §523 and §727, or for filing proofs of claim will not be extended. It is only if the Debtor seeks an extension beyond 15 days or the Trustee denies the request that one should file a motion to reset and proposed order with the court.

When the Trustee approves the resetting of the 341 meeting, pursuant to Rule 2003(a) and Rule 9006(b), the Trustee shall convene the meeting on the appointed date and announce the reset date on the record.

Creditors and trustees may seek an extension of the deadline for filing discharge/dischargeability complaints by filing a motion with the court.

Motions to Excuse Co-Debtor from First Meeting of Creditors (All Chapters)

Motions to excuse an individual co-debtor should not be filed. The Trustee shall have the right to excuse the attendance of one individual co-debtor. This excuse must be noted by the Trustee on the 341 Memo that is prepared and filed in each case. Should the Trustee decline to excuse the co-debtor, then the Trustee may continue the 341 meeting, and at that time, the Debtors may, if they desire, file a motion to excuse attendance.

Waiver of Pay Orders (Chapter 13)

Motions to waive pay orders, either temporarily or permanently, should not be filed. The Trustee shall have the authority to waive the requirement of a pay order at the Section 341 meeting. The Trustee shall note the waiver on the proceeding memo. If the Trustee does not waive the pay order, the Debtor may then seek court approval by filing a motion consistent with the court's new docket call procedure.

Extensions of Time to File Schedules and Statements of Affairs (Chapters 7 and 13)

So long as the debtor complies with B.R. 1007(a)(1) and notwithstanding B.Rule 1007(c), motions to extend time to file schedules, statements of affairs, etc. in Chapters 7 and 13 shall not be required unless the debtor cannot file the same within 20 days of the petition date or 5 business days before the §341 meeting, whichever is earlier. When schedules, etc. are not filed until 5 business days before the § 341 meeting, Debtor's counsel shall deliver to the Trustee a copy simultaneous with their being filed. Any motions which seek an extension, shall state the cause specific to that particular case which justifies the request, or it will be summarily denied. Cause does not include "debtor needs more time" and like generic statements.

Settings Procedure

Contested matters in all chapters and adversary motions will **not** be set for docket call. They will be set for hearing each month as follows:

- 1st & 3rd Tuesdays at 2:00 p.m. - Chapter 7 contested matters
- 1st & 3rd Tuesdays at 10:00 a.m. - Chapter 13 contested matters
- 1st & 3rd Mondays at 1:30 p.m. - Chapter 11 contested matters
- 1st & 3rd Wednesdays at 1:30 p.m. - Adversary motion contested matters

The Clerk will set the hearing date and notify parties entitled to notice of the date and place of hearing by using the Bankruptcy Noticing Center. The hearing date will generally be the first date after twenty days after the date of the filing of the response in order to allow time for the court and movant to receive responses and prepare for the hearing. Please notify Anita Chapman, Courtroom Deputy (916-5847) for matters requiring a hearing of more than one (1) hour so that such matters may receive a special setting.

Moving parties shall use the negative notice language required in the local rules and shall place it on the first page of the pleading just below the title.

Disclosure Statements

Disclosure statements will be heard on the second Monday of each month at 1:30 p.m. once a disclosure statement has been filed with a plan. The Clerk's Office will set the hearing date and notify all parties entitled to notice of the date and place of hearing by using the Bankruptcy Noticing Center. Plan proponent's counsel will still be required to furnish a copy of the disclosure statement to any party-in-interest that so requests.

Expedited Matters

Parties will be required to request by separate pleading expedited consideration of their motions. The court will still grant or deny them on a case-by-case basis. Discovery disputes will not be heard at this time.

Adversary Proceedings

The attached revised "Scheduling Order" will be used in the Austin Division effective September 1, 1999.

Attached is a pattern calendar demonstrating a typical month of Judge Monroe's docket.

Please forward these new procedures to any out-of-town counsel for whom you appear in the Austin Division. The procedures are effective December 1, 2000.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE:		§	
		§	
		§	CASE NO.
	DEBTOR	§	
		§	CHAPTER
		§	
		§	
	PLAINTIFF	§	
VS.		§	ADVERSARY NO.
		§	
		§	
	DEFENDANT	§	

SCHEDULING ORDER

It is hereby **ORDERED, ADJUDGED AND DECREED** that the following dates and deadlines shall control this adversary proceeding:

1. **DISCOVERY DEADLINE:** _____, 2000.
2. **DEADLINE FOR DISPOSITIVE MOTIONS:** _____, 2000.
3. **DEADLINE FOR FILING PRE-TRIAL ORDER:** _____, 2000.
4. **DOCKET CALL FOR TRIAL:** _____, 2000, AT _____ P.M.

It is further **ORDERED** that all deadlines and requirements in the Addendum attached hereto shall be a part of this Order and shall be adhered to by all parties to this adversary proceeding.

Signed this _____ day of _____, 2000.

United States Bankruptcy Judge

ADDENDUM TO SCHEDULING ORDER

Issue having been joined, it is hereby **ORDERED**:

1. Counsel residing outside the State of Texas shall designate local counsel in writing, giving the street address, telephone number and mailing address. The designation shall be filed with the Clerk of the Court in this proceeding, and a copy shall be sent to all other counsel of record in this proceeding. This provision may be waived by the Court upon motion of counsel and service upon other parties.
2. **ALL DISCOVERY MUST BE COMMENCED AND COMPLETED BY THE DISCOVERY DEADLINE PROVIDED IN THIS ORDER.**
 - a. Designation of experts shall be an issue at any pretrial conference.
 - b. Counsel are encouraged to resolve discovery disputes by agreement. Motions to compel, motions for protective orders and similar motions, while not prohibited, may result in sanctions being imposed on the losing party or both parties as provided in Fed. R. Bankr. P. 7037 & 9011 or 28 U.S.C. section 1927, if a hearing is required thereon.
 - c. If applicable, parties may file dispositive motions under Fed. R. Bankr. P. 7012 & 7056 and Fed. R. Civ. P. 12(b) & 56. Such motions, if filed, must be filed by the deadline for dispositive motions in this Order. Responses to motions under FRBP 12 and 56 must be filed within 20 days after the Motion is filed. **ALL OTHER MOTIONS IN THIS ADVERSARY PROCEEDING, UNLESS UNOPPOSED, REQUIRE THE FILING OF A WRITTEN RESPONSE WITHIN 10 DAYS, OR THE MOTION MAY BE GRANTED WITHOUT A HEARING.**
 - d. All discovery shall be commenced at a time which allows for the full response time provided by applicable rules on or before the discovery deadline.

E.g., if the discovery deadline is July 15, interrogatories must be actually delivered on or before June 15 in order to allow thirty days for answers. If the interrogatories are mailed, then they must be mailed on or before June 12, pursuant to FED. R. BANKR. P. 9006(f), to allow three additional days for service by mail.

- e. The Court may, upon motion and for cause shown, extend, reduce, or otherwise modify the deadlines set out in the Scheduling Order. Mere agreement of the parties to such extensions or modifications is not of itself sufficient cause.
3. An original and one copy of the Pre-Trial Order must be filed on or before the Pre-Trial Order deadline provided in this Order. If the Pre-Trial Order is not timely filed, a default judgment may be rendered or the proceeding may be dismissed for want of prosecution. Counsel may agree on a single Pre-Trial Order; however, if counsel cannot agree, counsel must file separate proposed Pre-Trial Orders on or before the deadline. The proposed Pre-Trial Order shall contain the following:
- a. A short and concise statement of the nature of the dispute.
 - b. A statement as to jurisdiction, including whether the matter is core or non-core, and if non-core, whether the parties consent to the entry of a final order by the bankruptcy judge.
 - c. A summary of the agreed facts.
 - d. A summary of the agreed applicable law.
 - e. A summary of the disputed factual issues.
 - f. A summary of the disputed legal issues. Such summary shall include a discussion of laws involved by specific reference to code provisions, state or federal statutes and/or regulations, applicable rules of procedure and conflict questions, if any. (Copies of regulations must be attached.)
 - g. A list of witnesses who may be called, accompanied by a short and concise statement of their proposed testimony.
 - h. A numbered list of exhibits upon which the parties intend to rely at trial.

- i. An estimate of the length of time required to hear the complete trial on the merits.
 - j. A certificate that a conference of counsel has been held regarding settlement, stipulations of agreed facts, and simplification of the issues.
4. Counsel and unrepresented parties must confer prior to the date the Pre-Trial Order is required to be filed, to fully explore the possibility of settlement, to stipulate to matters not in dispute and to simplify the issues. The Pre-Trial Order shall contain a certificate to the effect that the conference of counsel has been held. Counsel must also confer in an effort to determine whether the original time estimate for trial is correct or should be revised. If the parties wish to have a pre-trial conference with the Court, a pre-trial conference should be requested as early as possible, but at least 60 days prior to the trial. No pre-trial conference will be scheduled with the Court unless absolutely necessary, except as follows:

IF COUNSEL'S ESTIMATE OF TRIAL TIME IS 5 HOURS OR MORE, A PRE-TRIAL CONFERENCE MUST BE REQUESTED. IT WILL BE THE PARTIES' BURDEN TO MAKE WRITTEN REQUEST FOR THE PRE-TRIAL CONFERENCE IN SUCH INSTANCE, WITHIN 30 DAYS AFTER THE DATE OF THIS ORDER. DESIGNATION OF EXPERTS SHALL BE AN ISSUE AT ANY PRE-TRIAL CONFERENCE.

IF A JURY DEMAND IS FILED BY ANY PARTY TO THE PROCEEDING, THAT PARTY MUST FILE A WRITTEN REQUEST (WITH SERVICE UPON ALL OTHER PARTIES) FOR A PRE-TRIAL CONFERENCE WITHIN 30 DAYS OF THE DATE OF THE FILING OF THE JURY DEMAND, OR WITHIN 30 DAYS OF THE DATE OF THIS ORDER, WHICHEVER IS LATER, OR THE JURY DEMAND WILL BE WAIVED. THIS WRITTEN REQUEST FOR PRE-TRIAL CONFERENCE MUST BE ACCOMPANIED BY A BRIEF ADDRESSING THE FOLLOWING ISSUES :

- (1) Whether the matter or matters are core or non-core proceedings;
- (2) Whether the party consents to the conduct of a jury trial by the bankruptcy judge or, if not, whether the party has filed a motion to withdraw the reference;
- (3) Whether the party is entitled to a jury trial under applicable law.

5. Any legal briefs to be considered by the Court at the trial of this proceeding must be submitted at the same time and in the same manner as the Pre-Trial Order and must be separately bound.
6. Trial exhibits (other than rebuttal, demonstrative and physical exhibits) shall be bound at the side, in book form, separated by tabbed dividers with a cover sheet listing the exhibits. Each exhibit shall bear a standard exhibit label on the bottom of the first page of the exhibit identified.- Exhibits shall be exchanged not later than 5 calendar days prior to docket call. *See* Bankruptcy Local Rule 7016(g)(3).
7. **DOCKET CALL IS SET ON THE DOCKET CALL DATE PROVIDED IN THE SCHEDULING ORDER.**

The only matters to be considered by the Court at docket call are as follows:

- a. Date, time and place of trial following docket call.
- b. Properly and timely-filed motions for continuance or for default judgment.
- c. Motions not previously ruled on under FED. R. CIV. P. 12 and FED. R. BANKR. P. 7012.
- d. Settlement announcements.

FAILURE TO ATTEND DOCKET CALL MAY RESULT IN DISMISSAL OR RENDITION OF FINAL JUDGMENT. YOU MAY, HOWEVER, AUTHORIZE ANY MEMBER OF THE BAR OF THIS COURT, INCLUDING OPPOSING COUNSEL, TO MAKE AN APPEARANCE ON YOUR BEHALF AT DOCKET CALL, IF THERE ARE NO CONTESTED MOTIONS FOR CONTINUANCE, MOTIONS FOR DEFAULT JUDGMENT OR MOTIONS UNDER FED. R. CIV. P. 12 AND FED. R. BANKR. P. 7012.