

Help Me Help You A Few Practice Pointers From One of Your Friendly Orlando Bankruptcy Judges

By: Hon. Grace E. Robson

The following practice pointers are entirely mine, and I am limiting my pointers to a few issues that commonly come up. I am not speaking for my colleagues whose views may differ.

Consult and Follow the Local Rules

The Local Rules are a valuable resource on District-wide procedures. It is important to comply with them as they have the force of law. For example, Local Rule 9013-1 provides that a motion must request only one form of relief unless the request seeks alternative forms of relief under the same provision of the Bankruptcy Code or Bankruptcy Rules. There is a reason for this—the way documents are filed impacts whether they are or are not set for hearing. If your paper is filed as a notice but it includes a motion, the Court will not know you are asking for a hearing. Another example is Local Rule 9072-1(d)(4), which provides that agreed orders should contain the preamble “By submission of this order for entry, the submitting counsel represents that the opposing party consents to its entry.” Please keep in mind that failure to comply with the Local Rules may result in the delay or denial of your request.

Hearing Procedures

First, a reminder, all hearings before me are *in person*. Generally speaking, if you want to appear via Zoom, you will need to file a motion unless you are there only to observe the hearing, the matter is uncontested or settled, or the parties agree to seek a continuance. **Do not call my Chambers** to find out what constitutes “good cause” to appear via Zoom. Once you file a motion to appear via Zoom, you should email a copy of the filed motion to Chambers as directed in my Hearing Procedures.¹

- Zoom Request Tips – What Information Should Be in a Request?
 - The date of the hearing;
 - What the hearing is about and what your role is in the matter;
 - What you expect to happen at the hearing, i.e., announce settlement, ask for continuance, schedule a trial;

¹ https://www.flmb.uscourts.gov/orlando/robson/Judge_Robson_Hearing_Procedures.pdf?id=1

- Do not tell me your office is not in Orlando as this is irrelevant to whether I will grant the motion.
- Zoom Registration
 - Parties that have permission to appear via Zoom should register as early as possible; if you know a month in advance that you will be seeking permission to appear via Zoom, please file your motion more than two days in advance. Also, ***test the Zoom link***. Occasionally, parties will receive an error message; if that occurs, parties should re-register. You can contact Chambers if you have an issue with the Zoom link.
- Preparing a Notice of Hearing
 - When filing a notice of hearing, make sure to select the correct judge in the drop-down menu as the judges use different language in the form of notice of hearing.

Motion Practice

- State Exactly What Relief You Want in the Wherefore Clause: The Court and parties in interest should never be unclear as to what relief is requested. The Wherefore Clause is a great place to succinctly enumerate what you are asking the Court to do. It is best to explicitly state what relief you are seeking. Vaguely asking the Court to “grant this Motion” does not empower the affected parties to respond appropriately.
- Binding Case Law: If binding Eleventh Circuit case law exists, include it in your pleadings. If there is a split of opinion, be honest about it and advocate as to why I should rule in your favor.
- Check for Proper Service: Confirm that you have the correct address for parties that will be receiving service—this will save you from having to re-serve and/or attend multiple hearings. Also, pay special attention to the service requirements for insured depository institutions and governmental entities.
- Requests for a Hearing on an Emergency or Expedited Basis: Local Rule 9013-1(d), (e) sets forth requirements when seeking a hearing on an emergency or expedited basis. For emergencies, parties must file a “Certificate of Necessity” using the specific CM/ECF docketing event with the same name. The form can be found on The Source in the section titled “*Emergency Matters (including Certificate of Necessity)*.”² After filing a motion seeking an emergency hearing

² <https://www.flmb.uscourts.gov/proguide/index.asp>

or expedited relief, counsel should contact Gena Whitsett, my Courtroom Deputy, to coordinate scheduling the hearing.

Proposed Orders

Providing relief in a timely manner is beneficial to all parties. When submitting a proposed order, there are a few things you should do to ensure that your proposed order will not need to be resubmitted.

- Orders After Hearing: Timely submit your proposed order. The Local Rules require submission of proposed orders within 3 days of the hearing, but the sooner you submit it, the sooner it will be entered.
- Use the Style Guide, which can be found at https://www.flmb.uscourts.gov/procedures/district/style_guide-POST.pdf?id=1
Too often, proposed orders are submitted with the incorrect Court name, insufficient room at the top (3-inch margin) to affix my signature, and lacking necessary information like the correct name of a motion, the document number, and hearing date and time.
- Utilize Sample Forms!
Take advantage of the many form motions and orders on The Source, which are available at <https://www.flmb.uscourts.gov/proguide/index.asp>; in addition, I have prepared specific forms for frequently used orders that can be found at <https://www.flmb.uscourts.gov/judges/robson/>.
- “Dos” for Proposed Orders
 - Do reference all motions, responses, and replies (and the corresponding document numbers) that are being addressed in the proposed order.
 - Do reference the correct Courtroom when submitting orders scheduling hearings.
 - Do include that a hearing is canceled in the title and body of a proposed order (via separate paragraph) if the proposed order cancels a hearing. An example of a title is “Agreed Order (1) Granting Motion for Relief from Stay and (2) Canceling Hearing.”
 - Do include the language referenced in Local Rule 9072-1(d) in agreed orders.
 - Do attach legible attachments when included as exhibits to a proposed order.
- “Do Nots” for Proposed Orders
 - Do not use “hereby.”
 - Do not use “nunc pro tunc” (instead use “effective as of”).

- Do not use any unnecessary archaic language.
- Do not include the attorney's signature block.
- Do not submit an order where the last page only contains directions for service.
- Do not submit orders before the negative notice (plus 3 days for mail) time has expired to object or respond to the corresponding motion.
- Do not include internal document identification in the footer.

Chapter 11 Cases

- Redline Comparison: If an amendment or modification is filed with respect to a plan or disclosure statement, the plan proponent should contemporaneously file (under separate notice of filing) a redline comparing the prior version to the amendment or modification.
- Distribution Chart for Plans: It would be helpful to attach a proposed distribution chart to the plan that lists the creditor names (scheduled creditors and creditors that filed proofs of claim), class the creditor is being treated in, claim amount by class, as well as the proposed distribution (amount of distribution as well as %, i.e., Class 3 unsecured creditors will receive a 5% distribution under the plan, etc.). I may begin requiring plan proponents to provide a distribution chart in the future.
- Motion for Cramdown: A motion seeking to approve a plan under either 11 U.S.C. § 1129(b) or § 1191(b) is not necessary if the plan and disclosure statement include language that the plan proponent intends to seek non-consensual confirmation in the event it does not have sufficient votes accepting the plan. Only one motion setting forth all impaired classes at issue should be filed.
- Confirmation Orders
 - For Subchapter V cases, proposed orders confirming a plan should include requirement to file and serve notice of substantial consummation of the plan within 14 days thereof as required under 11 U.S.C. § 1183(c)(2).
 - All proposed orders confirming a plan should include a requirement to file notice of effective date of the plan.
- Post-Confirmation Reporting for All Chapter 11 Cases: I require filing of post-confirmation quarterly reports, which include detail on disbursements, distributions, and any transfers of real property made pursuant to the confirmed plan until the entry of a final decree. Counsel must include reference to the required post-confirmation reporting in any proposed order confirming

plan. An example of appropriate language is: “Debtor shall file with the Bankruptcy Court a financial report or statement of disbursements for each quarter (or portion thereof) that this Chapter 11 case remains open, in a format prescribed by the United States Trustee. These reports shall include any disbursements made from the sale or refinance of any real property. Debtor shall attach to the quarterly report copies of all refinancing and/or sale closing documents for any property sold during the applicable period.”

Adversary Proceedings

- When Amending a Complaint, Add New Counts at the End: It is confusing to re-number counts in a complaint after the parties and the Court have considered the matter to any extent. If you amend a complaint by adding new counts at the end, then count 1 will always be count 1, etc.
- Use Only Arabic Numerals for Count Numbers in a Complaint: Please use Arabic numerals. Roman numerals are not easily recognized and can lead to duplicating or skipping count numbers.
- Removal is Almost Never a Good Idea: Most times, the matter removed is entirely non-core, raising concerns about the ability of the Bankruptcy Court to enter final orders. Instead, you might seek relief from the automatic stay to continue litigation in the original forum. Or, depending on the nature of the claims, you may file a new adversary proceeding in the bankruptcy case, presenting only those claims appropriately pursued in bankruptcy court.

Evidentiary Hearings/Trials

- Alert Chambers if Matters Have Been Resolved: If a matter is set for trial or evidentiary hearing, please alert Chambers as soon as possible that matters have been settled so that the calendar can be cleared for other matters. **Please note:** I will not remove the trial from the calendar unless a motion or stipulation of dismissal is filed.
- Timely Upload Exhibits and Other Documents: Please make sure that all exhibits, witness lists, and other documents are timely uploaded. If you have technical issues inhibiting your ability to timely upload required documents, file a motion seeking an extension of time and contact Chambers.
- Exhibit Binders: I am trying my best to be as paperless as possible. If the exhibits are not voluminous, I do not require an exhibit binder. The uploaded exhibits are the “official” record, so if there are voluminous documents and you know you will be asking me to look at certain pages, feel free to provide me

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with a binder containing only those pages you will be asking me to review. **Also, you do not have to include the exhibit cover sheet referenced in Local Rule 9070-1 unless the exhibit is admitted at trial and was not listed on the exhibit list.**

Thank you for taking the time to read these practice pointers—I appreciate your reading all the way to the end! 😊