



UNITED STATES BANKRUPTCY COURT

Northern District of Ohio

Howard M. Metzenbaum United States Courthouse, Suite 248

201 Superior Avenue

Cleveland, Ohio 44114

The Honorable Suzana Krstevski Koch
United States Bankruptcy Judge

(216) 615-4422
JudgeKochChambers@ohnb.uscourts.gov

“As an officer of the court, a lawyer not only represents clients but
has a special responsibility for the quality of justice.”
Preamble, Ohio Rules of Professional Conduct

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## **General Practices and Procedures for Appearing before Judge Koch**

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November 29, 2023

## **1. General; Courtroom Decorum and Courthouse Security**

All parties must comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules for this Court and the District Court (as applicable), and the Ohio Rules of Professional Conduct.

Parties should be familiar with Judge Koch's Administrative Order 23-04, filed on October 18, 2023, as well as all applicable General Orders and other Administrative Orders, including the Administrative Procedures Manual. The Administrative Procedures Manual provides guidance to individuals and entities authorized to use the court Electronic Case Filing (ECF) system, which is the court's electronic case management system. The manual includes instructions on ECF registration, case filing, service, document access, maintenance, and verification.

### Courtroom Decorum

Courtroom Decorum is governed by Local Civil Rule 83.3 of the United States District Court for this district pursuant to Local Rule 5072-1. No food, drink, cards, signs, or banners are permitted in any courtroom, except as permitted by the Court.

Judge Koch allows counsel and parties to bring drinks with a lid into the Courtroom. Small snacks are also permitted, provided they are not eaten inside the Courtroom.

Judge Koch expects counsel to wear business attire.

### Courthouse Security

Court Security is governed by Local Civil Rule 83.4 of the United States District Court for this district pursuant to Local Rule 5072-2. All persons entering the Howard M. Metzenbaum U.S. Courthouse are required to pass through an electronic metal detector before gaining access to the building.

## **2. In-Person Attendance at Hearings; Personal Laptops, Cell Phones, and Other Technology and Items in the Courtroom**

As of January 2, 2024, unless otherwise ordered, attorneys and *pro se* parties must attend all hearings in-person.

### Telephone Appearances

The Court will allow appearance by telephone in limited circumstances for good cause. Any party or counsel who wishes to appear by telephone must file a motion requesting leave to attend by telephone explaining the reason for the request *no later than 3:00 p.m. two business days before the scheduled hearing*. Please note that the general press of business is not good cause. Should the Court grant a request to appear by telephone, Chambers will issue a unique passcode to the moving party.

Failure to appear may result in denial of the relief requested or other appropriate sanctions. In emergency or unforeseen circumstances, as soon as is reasonably practicable, counsel or *pro se* parties should contact Chambers to explain the emergency.

### Personal Laptops, Cell Phones, and Other Technology and Items in the Courtroom

Local Bankruptcy Rule 5073-1 regarding photography, recording devices, and broadcasting is applicable and incorporates Local Civil Rule 83.1 of the United States District Court for this district. Judge Koch's Courtroom is governed by Local Civil Rule 83.1. Counsel and parties who wish to bring any personal devices into Judge Koch's Courtroom must be familiar with this Rule because the Howard M. Metzenbaum U.S. Courthouse is a "Federal Court facility" as defined therein. *Any person bringing an electronic device into a Federal Court facility shall be determined to have consented to the provisions of Local Civil Rule 83.1, including the enforcement provisions regarding confiscation, dismissal, arrest, and contempt of Court.* Please note that a violation that disrupts a judicial proceeding may be punished by summary proceedings.

Counsel of record may use laptops at counsel table provided they are following the rules prohibiting photography, recording and broadcasting. Judge Koch allows all counsel to use personal devices in the Courtroom when not at counsel

table, provided they are silenced, not disruptive, and Local Civil Rule 83.1 is not violated in any way. This privilege may be revoked at any time.

Cell phones belonging to parties must be turned off in the Courtroom, unless there is express permission from Judge Koch that the cell phone may be turned on. Taking photographs, making audio/video recordings, and radio, television and internet broadcasting are prohibited in the Courthouse.

Court staff, court security officers, and deputy marshals are authorized to seize and inspect devices suspected of being used in violation of these rules. Seized devices will not be returned until the conclusion of all proceedings at the direction of the presiding judicial officer. Violators will be subject to sanctions for contempt of court.

Judge Koch has several attorney and witness rooms that are available if counsel or parties need to confer or require a room from which to make a short phone call.

There is wi-fi available in Judge Koch's Courtroom. Counsel tables have power, but they do not have a connection to the Courtroom monitors. There is a document camera at the podium. The document camera is connected to the Courtroom monitors.

### **3. Communication with Chambers**

Rule 9003 prohibits *ex parte* communications with the Court concerning matters affecting a particular case or proceeding.

Ohio Rule of Professional Conduct 3.5 prohibits *ex parte* communications with a judicial officer or other official as to the merits of the case during the proceeding unless authorized to do so by law or court order.

Judge Koch does not permit telephone calls to Chambers, absent specific circumstances detailed in these procedures. Contact with Chambers is only allowed for the express purposes set out in these procedures.

Emails to Chambers are not pleadings, and do not constitute a request for relief, other than for the limited purposes of administrative items and in compliance with the emergency hearings procedures. Any other form of relief may only be sought in accordance with all applicable laws and rules. Any other

communication with Chambers may be considered an impermissible *ex parte* communication.

Please note that communications sent to Chambers should be sent by attorneys admitted to practice before this Court. To the extent communications are sent by paraprofessionals, such communications should be limited to such communications as are appropriate under applicable rules governing the practice of law. The attorney of record for the matter must be copied on the email. The Court may enter communications sent to Chambers on the Docket for the case that is the subject of the communication and may include the content of the communication on the Docket Calendar.

#### **4. Scheduling Hearings; Requesting Adjournment**

Court staff will schedule hearings, unless instructed otherwise by Judge Koch. Judge Koch's motion docket dates are posted on her website.

Adjournments require advance Court approval. Parties may request an adjournment by motion *filed no later than 3:00 p.m. two business days before the scheduled hearing.*

If all interested parties are in agreement, instead of filing a motion, the parties may email a request for an adjournment to Chambers at [JudgeKochChambers@ohnb.uscourts.gov](mailto:JudgeKochChambers@ohnb.uscourts.gov). The email to Chambers must be copied to all interested parties known to the requesting party, and it must be received by Chambers *no later than 3:00 p.m. two business days before the scheduled hearing.*

Any request for an adjournment, whether by motion or email, must state :

- i. whether or not the adjournment is agreed to by all parties seeking and opposing the relief in question;
- ii. the basis for the request;
- iii. how many previous adjournments have been sought; and
- iv. the period of time requested until the next hearing.

Late adjournment requests will not be considered unless good cause exists for the untimely request.

Whether requested by motion or email, a hearing is not adjourned until the Court orders an adjournment. If a hearing is adjourned from the current Docket Calendar, a Docket entry will issue to parties registered on the ECF system. Additionally, Judge Koch's "Docket Calendar for the Current Week" on her website is updated every 15 minutes and includes the most current Docket Calendar information.

Please note: a third adjournment will generally be a final adjournment, particularly for Chapter 13 plan confirmations, unless good cause is shown why any further adjournments are necessary.

Telephone calls to Chambers to request an adjournment are not permitted.

## **5. Settlements; Withdrawals**

A hearing may no longer be necessary if (1) all interested parties timely settle a matter or if a withdrawal is timely filed, and (2) the Court has no questions regarding the matter.

- i. Settlement/ Proposed Agreed Order. If there is clear agreement between all interested parties that all objections to the matter set for hearing have been resolved and a proposed agreed order *has already been submitted to the Court no later than 3:00 p.m. two business days before the scheduled hearing*, and the Court has approved and entered the agreed order, then there may be no need to hold a hearing. The hearing may be removed from the Docket Calendar. A lack of any filed objections to a motion or application does not necessarily mean there is a clear agreement between all interested parties.
- ii. Withdrawal. A withdrawal must be *filed no later than 3:00 p.m. two business days before the scheduled hearing*, otherwise the hearing will remain on the Docket Calendar, and counsel shall be present in-person.

If a hearing is removed from the Docket Calendar, a Docket entry will issue to parties registered on the ECF system. Additionally, Judge Koch's "Docket Calendar for the Current Week" on her website is updated every 15 minutes and includes the most current Docket Calendar information.

Telephone calls or emails to Chambers to report a settlement or withdrawal to excuse appearance at a hearing are not permitted.

## **6. Motions Practice; Expedited Relief Motions for Lien Avoidance and Valuation of Security; Motions for Relief from the Automatic Stay**

Motions are typically governed by Bankruptcy Rules 9013 and 9014. These rules require pleadings state with particularity the relief requested and the grounds therefore, and require the pleadings be served in the same manner as a summons and complaint under Bankruptcy Rule 7004.

Most applications (e.g., to sell or use property of the estate, professional employment, Rule 9019 settlement or compromise, compensation) must be served in accordance with Bankruptcy Rule 2002.

Motions should address the issues presented in the motion and follow with the pertinent facts, statutory framework, legal arguments, and the specific relief requested in the motion.

Motions, applications, or other pleadings seeking relief from the Court shall be filed and accompanied by: (a) a notice to all parties in interest entitled to notice as specified by applicable Federal Rules of Bankruptcy Procedure, statute, Local Rules, and/or as the Court may order; (b) a certificate of service in accordance with all applicable rules and Local Rule 9013-3; and (c) a proposed form of order. All proposed orders shall be submitted electronically using the ECF E-Orders module. All proposed orders must be submitted electronically at the time of filing of the motion, application or other document seeking relief from the Court.

The notice of motion, application, or other pleadings seeking relief from the Court shall include a deadline by which parties in interest shall file a response or objection to the relief requested. The objection deadline shall comply with the Federal Rules of Bankruptcy Procedure, all applicable laws, Local Rules, and/or as the Court may order.

## Expedited Relief

To request an expedited hearing, counsel must file a motion requesting an expedited hearing. Such a motion should be filed contemporaneously with the motion seeking the relief in question. In addition to being filed on the Docket, the motion to shorten notice should also be e-mailed to Chambers at JudgeKochChambers@ohnb.uscourts.gov, copying opposing counsel.

The motion requesting an expedited hearing shall set forth:

- i. a description of the relief requested;
- ii. the reasons for which an expedited hearing or disposition is requested;
- iii. the identity of all parties who may be affected by the relief requested in the underlying filing or paper;
- iv. the method of notification of all interested parties; and
- v. the proposed shortened notice or response period being sought and any proposed date or dates and time for any expedited hearing being sought.

The motion requesting shortened notice shall include a recitation by counsel for the movant that a reasonable effort has been made to notify at least counsel to the debtor, counsel to the United States Trustee, counsel to any official committee appointed in the case and any chapter 7, 11 or 13 trustee and whether such party objected to the relief sought, or not, or the basis for the moving party not making such an effort. Unless otherwise ordered, failure to include this recitation may result in denial of the motion requesting an expedited hearing. The Court will rule on such motion promptly without need for a hearing.

The movant must upload a proposed form of order that grants the motion for expedited hearing using the ECF E-Orders module at the time of filing the motion, leaving blanks for a hearing date, time, response and reply deadlines, which Chambers will complete. Movant is responsible for promptly serving the order setting the expedited hearing and any other required papers.



Counsel seeking emergency relief may contact Judge Koch's Chambers to apprise the Court of a matter that requires urgent attention, including the scheduling of an emergency hearing.

### Motions for Lien Avoidance and Valuation of Security

All requests for relief involving lien avoidance or valuation of security shall comply with all applicable laws and rules. A motion to avoid a lien must state a *prima facie* case for relief, regardless of whether it is ultimately opposed. Motions seeking the avoidance of a lien on any other collateral under 11 U.S.C. § 522(f) must be in writing and state/include the following:

- i. The subsection of 11 U.S.C. § 522(f) under which the relief is requested;
- ii. Name and address of lienholders whose liens are to be avoided;
- iii. A statement describing the nature of the lien;
- iv. A statement as to the priority and balance of each lien, including an explanation of the basis for the statement as to the balance;
- v. The date upon which the lien was perfected;
- vi. The lien number or recording reference, and agency where lien was filed;
- vii. The legal description of the collateral sufficient for identification, including, but not limited to, the full street address including city and state, permanent parcel numbers, and the county auditor's property information printout attached as an exhibit to the motion;
- viii. A statement of value of the collateral, and the basis for the valuation;
- ix. A description of nature and amount of exemptions impaired; and
- x. Any other facts which would be relevant in determining whether the motion should be granted.

A motion to avoid a lien is a contested matter and must be served in the manner provided for service of a summons and complaint by Bankruptcy Rule 7004. Corporations, partnerships, financial institutions, and the United States of America, among others, have particular service requirements which must be met.

### Motions for Relief from the Automatic Stay

Parties must be familiar with Local Rule 4001-1. Parties seeking relief from stay must use the local forms, which are available from the Clerk and also on the Court's website. Any deviation from the standardized forms shall be explained in bold-faced type within the body of the submitted document. Any inapplicable paragraphs may not be removed, but should be marked as such. A party may deviate entirely from these revised forms for good cause, examples of which include (but are not limited to) ongoing (non-foreclosure) litigation, domestic relations matters, administrative proceedings, or to effect an offset of prepetition debt.

### **7. Adversary Proceedings; Adversary Proceedings to Deny or Revoke a Debtor's Discharge**

An Initial Pretrial Conference shall be scheduled after an answer or other responsive pleading is filed. The parties must confer as soon as practicable to discuss the case and prepare the proposed discovery plan pursuant to Federal Rule of Civil Procedure 26(f). A Report of the Parties' Planning Meeting shall be filed with the Court promptly after the Parties' Planning Meeting and at least 3 business days before the Initial Pretrial Conference. The Report of the Parties' Planning Meeting shall also include a statement addressing consent to entry of a final judgment or order by this Court.

The Court strongly prefers that the parties exchange initial disclosures at least 7 days before the Parties' Planning Meeting to facilitate discussions. The parties shall provide initial disclosures to the other parties specified by Federal Rule of Civil Procedure 26(a)(1) without awaiting a discovery request, unless (i) one of the Rule 26(a)(1)(B) exceptions applies, or (ii) a party objects during the Parties' Planning Meeting and states that objection in the Report of the Parties' Planning Meeting.

At the end of discovery, the Court requires counsel to file jointly a list of all facts and legal conclusions that are not in dispute that can be the subject of stipulations, including identifying all documents either party intends to introduce

as an exhibit and to which the parties agree are authentic. These stipulations are due 14 days after the close of discovery.

Unless otherwise ordered, dispositive motions may be filed at any time until 30 days after the close of all discovery, any responses in opposition to dispositive motions shall be filed within 21 days, and any replies to responses in opposition shall be filed within 7 days. Dispositive motions shall be decided without oral argument unless a hearing is scheduled by this Court.

Motions in Limine and other motions relating to the conduct of the trial must be filed and served not later than 7 days before trial.

At least 3 business days before trial, the parties shall file and serve a trial brief. The brief shall contain:

- i. a general statement of the case;
- ii. a list of the fact issues to be determined at trial with reference to the burden of proof and a short discussion of evidence to be offered, and proposed findings of fact which shall cite the particular witness(es) or exhibit(s) upon which each suggested finding is based;
- iii. a list of the issues of law to be determined with citations to authority referencing the legal standard and the elements of any claims or affirmative defenses, and conclusion of law which shall cite legal authority;
- iv. a summary of any non-monetary or monetary relief sought, including injunctive relief, determination of dischargeability, allowance of a claim, secured status, costs, fees, etc., and the basis of any relief sought;
- v. an itemized statement of damages, in cases in which damages are relevant (if the parties agree on damages, they shall submit a stipulated statement of the damages; if the parties do not agree on damages, each party shall submit an itemized statement of damages); and
- vi. a statement of any evidentiary or procedural problem expected to arise, with citations to authority.

## Adversary Proceedings to Deny or Revoke a Debtor's Discharge

Prior to filing an adversary proceeding to deny or revoke a Debtor's discharge for failure to comply with Trustee requests (i.e., turnover of estate property or compliance with requests for information, etc.), a Chapter 7 Trustee must file a motion for an order to show cause in the main bankruptcy case. This motion should clearly explain to the Court how the Debtor has failed to comply with a prior Court Order. All show cause motions will be set for hearing. If the compliance issue is not resolved during the contempt process, the Trustee may then file an adversary proceeding to deny or revoke the Debtor's discharge.

### **8. Discovery Disputes**

In the event there is a discovery dispute, parties must personally consult with one another and sincerely attempt to resolve any discovery dispute. It shall be the responsibility of counsel for the party seeking discovery to initiate such personal consultation.

If the parties are unable to reach an accord, pursuant to Local Rule 7026-1, any motion to compel discovery, a motion for protective order, or another motion relating to disclosure or discovery, shall be accompanied by a supporting memorandum and affidavit reciting those matters which remain in dispute, and, the date, time, and place of the personal consultation, as well as the names of all parties participating therein.

In the case of a failure to answer a question at a deposition (including a claimed evasive or incomplete answer), the required personal consultation may take place at the deposition at which the alleged failure to answer occurs.

Responses in opposition to any motion filed pursuant to these procedures shall be filed within 7 days of the filing of any discovery dispute motion.

Unless otherwise ordered by the Court, no discovery dispute shall be brought to the attention of the Court, and no motion to compel may be filed, more than 14 days after the discovery cut-off. Federal Rule of Civil Procedure 37 is made applicable to proceedings in this Court by Federal Rule of Bankruptcy Procedure 7037.

## 9. Chapter 13

### Pre-confirmation Modifications

11 U.S.C. § 1323 addresses pre-confirmation plan modifications. A modified plan, filed prior to confirmation, shall clearly show any changes from the prior plan by highlighting the changes in a conspicuous manner. A pre-confirmation modified plan shall be served in accordance with Federal Rules of Bankruptcy Procedure 2002 and 3015. Copies of the modified plan, served on creditors and parties in interest, shall also include conspicuous highlighting of the changes. If a timely objection to confirmation of the modified plan is filed by the objection deadline included in the notice pursuant to Federal Rule of Bankruptcy Procedure 3015(f), the confirmation hearing may be rescheduled.

*Motions filed requesting that a pre-confirmation plan be modified shall be denied as moot.*

Counsel or parties may request an adjournment of confirmation due to the filing of a pre-confirmation modified plan using Judge Koch's adjournment procedures.

### Post-confirmation Modifications

11 U.S.C. § 1329 addresses post-confirmation plan modifications. A plan modification proposed after confirmation (1) shall be made by motion, must be filed with the Court and served in accordance with Federal Rules of Bankruptcy Procedure; and (2) the modified plan shall be attached.

1. The motion seeking modification of the plan shall include:
  - i. A particular reference to the provisions of the confirmed plan that are being modified, including any proposed percentage to be paid to unsecured creditors and the approximate number of months required to complete the proposed modified plan;
  - ii. The extent to which the proposed modification affects the rights of creditors or other parties in interest;

- iii. If a motion to modify the plan proposes to decrease the dividend to unsecured creditors or to extend the length of the plan, the reason for the modification, including any change in circumstances since confirmation; and
  - iv. If the motion to modify proposes to change the amount of each periodic payment to the plan and income or expenses has changed, then an amended Schedule I: Your Income and Schedule J: Your Expenses should also be filed.
2. The modified plan shall have the upper right-hand box checked on the first page and shall list the sections of the plan that have been changed.

“Motions to Absorb Plan Payments” are disfavored as not supported by Title 11. If plan payments have not been made, and the debtor’s request is that those plan payments be forgiven such that creditors will be receiving less, then a motion to modify the plan should be filed along with a modified plan. Such motions should explain how many payments have been missed and the amount of each payment.

When creditors are not adversely affected, a party may move to excuse service and notice of a post-confirmation modification and the objection deadline pursuant to Federal Rule of Bankruptcy Procedure 3015(h).

## **10. Chapter 11**

This section does not apply to cases under the Small Business Reorganization Act of 2019 (new Subchapter V of Ch. 11), eff. February 19, 2020.

Parties wishing to schedule first day hearings in Chapter 11 cases should contact Chambers on the date of filing to discuss scheduling of the hearing. Two copies of first day motions should be provided to Chambers in advance of the hearing, after the case is commenced.

It is expected that Debtor’s counsel will have consulted with the United States Trustee regarding all relief to be requested at the First Day Hearing.

Shortly after the commencement of any case filed under Chapter 11 of the Code, the Court will issue an Order and Notice of Chapter 11 Status Conference. The debtor-in-possession will be required to prepare and file a Status Conference Statement no fewer than 7 days prior to the status conference.

The purposes of the Chapter 11 status conference are to:

- i. review the financial, business or other problems that prompted the filing of a petition for relief;
- ii. understand the debtor's assets and liabilities; and
- iii. understand the debtor's strategy for exiting Chapter 11.

Counsel should expect that the Court will generally set deadlines at the Chapter 11 status conference, including deadlines for filing and confirming a plan.

At least 7 days prior to any subsequent status conference, the debtor-in-possession or any Chapter 11 trustee appointed in the case shall file an updated Status Conference Statement that simply advises the court of any material developments in the case.

Judge Koch expects strict compliance with the Code and Rules. In particular, failure to comply with the following requirements could lead to conversion or dismissal of the case:

- i. Attendance at the meeting of creditors pursuant to Code section 341(a);
- ii. Use of Cash Collateral. Code section 363(c)(2) prohibits the use of cash collateral unless the debtor has either the prior consent of each creditor having an interest in the cash collateral or an order from the Court;
- iii. Transactions outside the ordinary course of business. Code section 363(b)(1) requires notice and a hearing prior to engaging in any such transactions;
- iv. Postpetition taxes. The Court expects all postpetition taxes to be timely paid and all required tax returns timely filed;
- v. Monthly Operating Reports; and

- vi. Quarterly United States Trustee fees. 28 U.S.C. § 1930(a)(6) requires a quarterly fee to be paid to the United States Trustee. The amount of the fee will depend upon the amount of disbursements made by the debtor during each quarter.