

**CHAPTER 13 MISCELLANEOUS REQUIREMENTS AND PROCEDURES**

**REVISED APRIL 2016**

**Hon. Vincent P. Zurzolo**

**U.S. Bankruptcy Judge, Central District of California, Los Angeles Division**  
Roybal Federal Building, 255 E. Temple St. #1360, Los Angeles, CA 90012 (213)894-3755

**A. THERE ARE 3 WAYS TO OBTAIN A RULING:**

**LBR 9013-1(d), (o), (p) and (q)**

- (1) **Set a Hearing:** LBR 9013-1(d). Calendar on Judge Zurzolo's webpage has available dates.

The procedure for many motions, especially motions relating to the stay of 11 U.S.C. § 362, is to file a motion, set it for hearing on 21 days or more of notice, and give notice to the debtor, trustee and other required parties using LBR form **F 9013-1.1.HEARING.NOTICE**.

**MONDAY** Hearing Only, **10:30 a.m.** - Any motion involving dismissal, plan modification, valuation of property, employment, fees, claim objection, or permission to file new case..

**TUESDAY** Hearing Only: **9:30 a.m** - All motions for relief from stay or to impose/continue the stay; **11:00 a.m** - All motions for default judgment.

**THURSDAY** Hearing Only, **11:00 a.m** - Motions related to early stages of an adversary proceeding, such as motion to dismiss, discovery motions, or motion for summary judgment. (NOTE: Adv. proceeding status conferences are set by the court for Thursdays at 10:00 a.m.)

- (2) **Give Notice of Opportunity to Request a Hearing:** LBR 9013-1(o), LBR 3015-1(w) and (x)

Some motions may be brought by providing notice of the opportunity to request a hearing. **LBR 3015-1(w)** lists these motions, and other motions qualify because they are not prohibited by **LBR 9013-1(o)(2)**. Examples are: Motions to Value Property and Motions to Incur Debt. **LBR 3015-1(x)** provides the notice requirements. You must use LBR forms  
\*\* **F 9013-1.2.OPPORTUNITY.HEARING.NOTICE** and  
\*\* **F 9013-1.2.NO.REQUEST.HEARING.DEC.**

**NOTE:** A declaration under penalty of perjury is required for all motions and applications. See LBR 9013-1(i) and related LBR 3015-1 sections, including LBR 3015-1(v)(2) for fee applications. Applications for "No look fees" listed in Court Manual Section 2.9(b) still require a declaration to establish services were provided, and the outcome of the services.

- (3) **Give Notice, then Promptly Lodge an Order:** LBR 9013-1(p) and (q)

Some motions/applications are ruled on by simply filing a motion using new LBR form notice **F 9013-1.NO.HEARING.NOTICE**, serving it only as required by LBR 9013-1p) or (q), then promptly lodging an order. Note that some mail service is required under 9013-1(p),

**LBR 9013-1(p)** requires, for some motions, notice by mail on parties. For example:

- \* Application to Extend the Deadline to File Case Commencement Documents
- \* Motion to Confirm Loan Modification Discussion Does Not Violate the Stay
- \* Request for the Clerk to Issue Another Summons
- \* Request for the Clerk to Enter Default.

**LBR 9013-1(q)** authorizes, for some motions, notice by NEF only. For example:

- \* Debtor's Notice of First-Time Conversion from Chapter 13 to Chapter 7
- \* Debtor's Motion for Voluntary Dismissal of Case that has Not Been Converted
- \* Motion to Reopen Bankruptcy Case

## **B. MOTION TO VALUE REAL or PERSONAL PROPERTY COLLATERAL**

### **FRBP 3012 and 11 U.S.C. § 506(a)**

Any party in interest may seek a court order to set the value of real or personal property collateral. There is a LBR form motion and order on the court's website at [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov):

#### **F 3012-1.MOTION.VALUATION**

#### **F 3012-1.ORDER.VALUATION**

For debtors who eventually seek to avoid a junior lien on debtor's property, it may be more expedient to first determine the value of the collateral. If the debtor's chapter 13 plan is completed, a debtor may then pursue a judgment avoiding the lien in an adversary proceeding.

## **C. COMPLAINT TO AVOID JUNIOR LIENS ON DEBTOR'S PROPERTY**

### **ADVERSARY PROCEEDING REQUIRED**

If you seek avoidance of a fully unsecured lien, an adversary proceeding is required per FRBP 7001(2). Judge Zurzolo mandates the use of the following LBR forms:

#### **F 4003-2.5.COMPLAINT**

#### **F 4003-2.5.DEFAULT.MOTION**

#### **F 4003-2.5.DEFAULT.JUDGMENT**

If the adversary proceeding is settled by stipulation, **DO NOT USE** F 4003-2.4.ORDER. Instead, file the stipulation with all signatures. Then lodge a very simple order approving the stipulation. Do not reinsert the terms of the stipulation into the order.

## **D. MOTION TO CONTINUE THE STAY – LBR Form F 4001-1.M.IS**

### **30 DAY DEADLINE TO CONDUCT A HEARING**

11 U.S.C. § 362(c)(3) mandates that a hearing take place within 30 days of the petition date when an individual seeks to continue the stay beyond 30 days. Many debtors miss this deadline because they don't file their motion timely in order to give 21 days of notice of a hearing. Or, even when a debtor files the motion right after commencing the bankruptcy case, sometimes the court's calendar does not have a hearing date available within the 30 day time period. For the reasons stated below, Judge Zurzolo rarely sets a hearing on less than regular notice.

The plain language of 11 U.S.C. § 362(c)(3)(A) provides that the stay of 11 U.S.C. § 362(a) terminates (1) only "with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease" and (2) only "with respect to the Debtor." However, the Bankruptcy Appellate Panels for the First and Tenth Circuits<sup>1</sup> and the majority of courts to consider the issue<sup>2</sup> conclude, as Judge Zurzolo does, that the stay of 11 U.S.C. §362(a) remains in place as to property of the bankruptcy estate. As the bankruptcy estate includes the property subject of the motion and generally encompasses the majority of the Debtor's property per 11 U.S.C. § 541, an emergency is not presented by a 11 U.S.C. § 362(c)(3)(A) stay termination.

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1 . *In re Jumpp*, 356 B.R. 789 (BAP 1st Cir. 2006), *In re Holcomb*, 380 B.R. 813 (BAP 10th Cir. 2008).

2 See *In re Stanford*, 373 B.R. 890, 894-95 (Bankr. E.D. Ark. 2007) discussing the split in authority and listing the numerous courts following the majority view.

## **E. JUDGE'S COPIES NOT NEEDED**

Judge's copies are **not needed** for many chapter 13 documents. Most are identified in Court Manual Appendix F. Others are items Judge Zurzolo does not need, and will just end up in the recycle bin. **SAVE PAPER, POSTAGE AND YOUR OFFICE STAFF'S TIME. DON'T SEND THESE.**

- \* **Case commencement documents** - Please see Court Manual section 2.1(f) to identify a long list of "case commencement" documents. These include the petition and schedules, plus others including the RARA, chapter 13 plan, any amendments to case commencement documents, and the Notice of Section 341(a) Meeting and Hearing on Confirmation of Chapter 13 Plan.
- \* **Declarations re Preconfirmation Payments Involving Secured Debt; Declarations re Filing Tax Returns and Domestic Support Obligations** – Other chapter 13 Judges may require these.
- \* **Motions w/Opportunity to Request Hearing filed, LBR 3015-1(w)(1) and/or LBR 9013-1(o)**  
Do not send a judge's copy until **after** LBR form F 9013-1.2.NO.REQUEST.HEARING.DEC is filed to indicate the proper notice was given, and no party filed a response to request a hearing. Please review Court Manual Appendix I (eye) for giving respondents an extra 3 days to respond.
- \* **LOU orders on any motion, application or stipulation** – LBR 5005-2(d) and the Court Manual indicate that a judge's copy of any LOU order is not needed.

## **F. JUDGE'S COPIES NEEDED – LBR 5005-2(d) and Court Manual Appendix F**

1) A judge's copy means **ALL** of the following:

- \* **ONE** copy – do not send multiple copies of the same document. The goal is to send one copy to one place (i.e. to the judge).
- \* **STAPLED** or **BOUND** – Would you want to read something that isn't bound? Some parties send it unbound, but that was the method the court wanted when court staff scanned documents onto the docket. You already filed it electronically; thus, we won't scan it.
- \* **TABS FOR ALL EXHIBITS AND DECLARATIONS** – Please, put a separate tab to identify each declaration and each separate authenticated exhibit. We aren't trying to make your life harder. We want to quickly and easily reference all of the information you ask us to read. It is in everyone's interest that the court can access your documents easily.

2) **Common mistakes** with judge's copies:

- \* Filing LBR form F 9013-1.2.NO.REQUEST.HEARING.DEC under LBR 3015-1(w)(3) and LBR 9013-1(o)(4) without attaching a copy of the underlying motion/application.
- \* Filing a stipulation to continue a hearing or resolve a motion, but not delivering a copy to the judge, or delivering it so close to a hearing that it is impossible for the court to review and act on it. Plan to attend the hearing unless a tentative ruling is posted that waives appearances.
- \* Filing a document that relates to a hearing or adversary proceeding status conference, but the relevant date is not in the caption. We want to make sure filed papers are timely considered for a hearing. Even if a hearing is not required (for example) to rule on a stipulation, if the stipulation moots the need for a hearing or requests to continue the hearing, put the relevant date in the caption. Otherwise, your order will be marked unused and there may be a delay.
- \* Reducing the font size by including multiple pages on one sheet of paper.

## G. ATTORNEY APPEARANCE REQUIRED; EXCEPTIONS

### 1) Chapter 13 Confirmation and Miscellaneous Motion Calendar:

- a. Appearance **Not** Waived, Even if Chapter 13 Plan or a Motion is Not Opposed: Generally, if there is no written opposition to a chapter 13 plan or a miscellaneous motion, appearance at the hearing is waived. HOWEVER, an appearance at the hearing is not waived if the plan or motion **seeks relief that is not supported by admissible evidence.**
- b. Appearances Waived in Two Situations:
  1. The chapter 13 trustee recommends plan confirmation by consent; or
  2. A tentative ruling is posted granting a miscellaneous motion w/out the need to appear.
- c. Telephonic Appearances are Rarely Approved for Hearings on chapter 13 Calendar  
This includes hearings on plan confirmation and miscellaneous motions.

### 2) Relief From Stay Calendar

- a. Appearance **Not** Waived, Even if Motion is Not Opposed: Generally, if movant establishes cause to grant a relief from stay motion, and there is no written opposition to the motion, appearance at the hearing is waived. HOWEVER, there are situations in which an appearance at the hearing is not waived:
  1. The motion **seeks annulment or relief from the co-debtor stay, but the alleged facts are not supported by admissible evidence;**
  2. The motion **seeks relief that Judge Zurzolo rarely, if ever, grants,** such as:
    - A. **Real Property RFS Motion:** Page 5, checkboxes **8** or **10.**
    - B. **Personal Property RFS Motion:** Page 5, checkboxes **7, 8,** or **9.**
    - C. **Unlawful Detainer RFS Motion:** Page 5, checkboxes **7, 8, 9, 10** or **11.**
    - D. **Non-Bankruptcy Forum RFS Motion:** Page 5, checkbox **6.**
- b. Appearance Waived: If a tentative ruling is posted granting a motion w/out the need to appear.
- c. Telephonic Appearances: All requests must comply with Judge Zurzolo's Telephonic Appearance Instructions.

### 3) Adversary Proceedings

- a. Appearance Required for All Attorneys: An appearance is **ALWAYS** required for counsel of **all** parties unless a tentative ruling is posted to vacate a hearing or waive appearances.
- b. Appearance Waived: The situations in which an appearance may be waived are:
  1. **At least 3 days before a hearing:**
    - A. An order is entered to grant a stipulation to settle or motion to settle;
    - B. An adversary proceeding has been dismissed by court order, stipulation of the parties, or notice of dismissal filed before a response to the complaint has been filed; or
  2. A motion for default judgment establishes cause to be granted.
- c. Telephonic Appearances Rarely Approved: The exception is for medical emergencies.

## **H. HOW TO VOLUNTARILY DISMISS A MOTION OR AN ADV. PROCEEDING**

- 1) **There is no Legal Authority to “Withdraw” a Motion or a Complaint:** Neither the FRBP, FRCP, nor LBR authorize a party to “withdraw” a motion or adversary proceeding. Filing a notice of withdrawal is not effective to resolve an action or waive appearances at a hearing.
- 2) **Two Procedures Allowed to Dismiss a Motion or a Complaint:**
  - a. **File a Notice of Voluntary Dismissal:** The plaintiff or movant can dismiss a motion or a complaint by filing a Notice of Voluntary Dismissal using the appropriate LBR forms: **F 7041-1.ADV.VOLUNTARY.DISMISSAL** or **F 9013-1.5.MOTION.VOL.DISMISSAL**.  
  
FRBP 7041(a) provides the authority for a plaintiff to dismiss an adversary proceeding in two scenarios. FRBP 9014(c) provides the authority for the party who filed a motion (contested matter) to dismiss the motion in the same two scenarios.
    1. **If no Party Filed a Response to the Complaint or Motion** – Indicate so by checking that box in the Notice of Voluntary Dismissal. An order is not required.
    2. **If One or More Parties Filed a Response to the Complaint or Motion**: A Stipulation to Dismiss the Complaint or Motion is ALSO required.
      - A. File a Stipulation to Dismiss, and include signatures of all parties who filed a response. Or, stipulate on the record at the hearing or status conference. An order approving the stipulation is not required.
      - B. Then, file a Notice of Voluntary Dismissal in which you mark the checkbox that indicates a stipulation was either filed or entered into in court on the record.
  - b. **Request a Court Order:** Alternatively, movant or plaintiff may make an oral motion in court for dismissal of the action, or file a motion to voluntarily dismiss the action.

## **I. IF CASE IS DISMISSED, WHAT HAPPENS TO RFS MOTIONS OR ADV. PROC.?**

- 1) **Relief from Stay Motions:** Orders dismissing a chapter 13 case generally indicate jurisdiction is retained under 11 U.S.C. § 362. Therefore, pending relief from stay motions go forward.
- 2) **Adversary Proceedings that are now Moot:** If dismissal of the bankruptcy case causes an adversary proceeding to be moot, file LBR form F 7041-1.ADV.VOLUNTARY.DISMISSAL so that the clerk may close the adversary proceeding.

## **J. HOW CAN DEBTOR VACATE A DISMISSAL ORDER OR 180 DAY BAR?**

- 1) **Motion to Vacate Dismissal Order:** If an order dismissing a bankruptcy case contains a prohibition under 11 U.S.C. § 349 against filing a new case without a court order, a motion is required and a hearing on 21 days of notice to all creditors is required under LBR 9013-1(d).
- 2) **Motion to Vacate 180 Day Bar Against Being a Debtor:** If an order dismissing a bankruptcy case contains a 180 day prohibition under 11 U.S.C. § 109(g) against being a debtor, a motion is required to vacate the 180 day bar. LBR 9013-1(d) or (o) must be followed, i.e. either set a hearing on at least 21 days of notice, or use the LBR 9013-1(o) procedure to provide opportunity for parties to request a hearing. Do not file a motion that fails to identify the procedural context in which relief is sought. If LBR 9075-1(b) is followed, file the proper LBR form and declaration from the party with personal knowledge of facts asserted regarding the alleged emergency. A self-created emergency does not constitute cause under LBR 9075-1(b).