

JUDICIAL PRACTICES AND PROCEDURES

BANKRUPTCY JUDGE KEVIN J. CAREY

Judge Carey assumed office on January 25, 2001. Judge Carey received his J.D. in 1979 from the Villanova University School of Law and his B.A. in 1976 from The Pennsylvania State University. Judge Carey began his legal career as a law clerk to United States Bankruptcy Judge Thomas M. Twardowski and served as Clerk of Court of the Bankruptcy Court, Eastern District of Pennsylvania. Prior to his appointment, he was in private practice in Philadelphia, representing financial institutions, corporate creditors, landlords and debtors in bankruptcy and workout situations and bankruptcy litigation.

PRELIMINARY GENERAL MATTERS

1. Correspondence With the Court

Judge Carey discourages unsolicited correspondence from counsel. Judge Carey will, however, occasionally invite and/or direct counsel to report on the status of matters via letters. Judge Carey discourages correspondence from counsel beyond this and in particular will not consider matters raised via correspondence that should be raised properly by motion practice. All correspondence which relates to Judge Carey's calendar must be directed to the courtroom deputy.

2. Communications With Law Clerk

Judge Carey permits counsel to speak directly with his law clerk, subject to the limitations that law clerks are not permitted to give legal advice or discuss the merits of pending matters. Scheduling matters should be first taken up with the Judge's courtroom deputy, or, in the alternative, with his judicial assistant.

3. Telephone Conferences and Use of Facsimile Machines

Judge Carey welcomes the use of telephone conferences, provided that all pertinent parties are available to participate. Unless a request for telephone conference is in lieu of a scheduled hearing (in which event his courtroom deputy should be consulted), the Judge's judicial assistant handles the scheduling of telephone conferences.

Judge Carey does not accept facsimile correspondence or pleadings from counsel unless the same is requested and approved in advance.

4. *Pro Hac Vice Admissions*

Judge Carey prefers written requests for admission pro hac vice, but will allow such requests to be made orally or in writing at the time of hearing, when in keeping with local rule.

5. *Chambers Copies of Filed Papers*

Except when requested, Judge Carey discourages counsel from submitting chambers copies of pleadings. However, counsel may submit courtesy copies of memoranda of law to chambers.

LITIGATION GENERALLY

1. *Continuances and Extensions*

a. *General Policy*

Judge Carey is generally liberal with requests for continuances, provided that all parties consent. Such requests should be made to the courtroom deputy by letter if time permits or by telephone if necessary. Counsel are advised that Judge Carey's courtroom deputy is not in the office on Fridays and counsel with hearings scheduled for a Monday should plan accordingly. In emergencies, on Fridays, such requests should be directed to Judge Carey's judicial assistant or law clerk.

b. *Need for Filing Formal Stipulation or Motion*

If all parties consent, requests for continuances will be granted ordinarily as of course without the need for filing a formal stipulation or motion (except in adversary or other matters subject to a scheduling or pretrial order). If a request for a continuance is opposed, the Judge expects counsel to raise the issue via conference call. Otherwise, a written motion should be filed sufficiently in advance of the scheduled hearing to allow the same to be disposed of prior to the originally scheduled hearing date. If necessary, a request for expedited consideration should be made.

c. *Need for Court Appearance*

Judge Carey may sometimes dispose of a contested continuance request on the papers alone. Counsel will be advised in advance if a court appearance will be necessary.

2. *Proposed Findings of Fact and Conclusions of Law*

Judge Carey requires proposed findings of fact and conclusions of law in contested matters or adversary proceedings, unless otherwise indicated at the conclusion of the proceedings in court. Memoranda of law from the parties are welcome and the Judge will, depending upon the circumstances, refrain from deciding matters from the bench if parties wish an opportunity to brief certain issues.

3. *Reading of Material Into the Record*

Judge Carey will usually not permit the reading of substantial material into the record.

4. *Settlements*

a. *General Approach and Philosophy*

Judge Carey actively encourages settlement discussions and will participate in telephone conferences or chambers settlement conferences if all parties in interest agree. Judge Carey will participate in such conferences only to the extent that his role as fact finder will not be jeopardized if such discussions are unsuccessful. Requests for settlement conferences, whether by telephone or in chambers should be directed to the Judge's judicial assistant, unless the parties ask that such conference take place in lieu of a scheduled hearing, in which event his courtroom deputy should be consulted.

b. *Referral of Settlement Negotiations to Another Bankruptcy Judge*

When all parties in interest are in agreement and mediation is either inappropriate or has been unsuccessful, a request for a settlement conference with another bankruptcy judge will be entertained.

c. *Need for Court Appearance*

Settlements should be reported to Judge Carey's courtroom deputy and the necessary motions for court approval filed in accordance with Fed. R. Bankr. P. 9019 and local rule, as applicable. An objection to a proposed settlement will require a court appearance. Otherwise, a court appearance is not required unless counsel are advised to the contrary.

UNCONTESTED MATTERS

When a motion or application is uncontested because no responsive pleading was filed by the deadline set forth in the Notice of Motion, counsel for the moving party shall file a certificate of no response and notify Judge Carey's courtroom deputy by telephone that the matter is uncontested. If however, a moving party is advised that the respondent intends to appear and contest the request for relief, notwithstanding the failure to file a timely response, the moving party is expected to appear at the scheduled hearing.

CONTESTED MATTER PRACTICE AND PROCEDURE

1. Filing Memoranda of Law/Briefs

a. Before Hearing

Judge Carey ordinarily does not require that memoranda of law be filed prior to a hearing. If a party chooses to file a pre-hearing memoranda of law, a copy should be served on other interested parties and a courtesy copy delivered to chambers prior to the hearing if possible.

b. After hearing

Memoranda are required only if so indicated at the conclusion of proceedings in court. Parties desiring to submit post-hearing memoranda will be permitted generally to do so.

c. Reply and Surreply Memoranda/Briefs

Reply and surreply memoranda/briefs will be permitted if approved in advance at the time briefing is established. Judge Carey will not consider any unsolicited reply memoranda filed without prior permission of the court.

2. Scheduling of Expedited Hearings

Local Bankruptcy Rule 9014-2 governs requests for expedited hearings. Upon the filing of a motion for expedited hearing with the Clerk's Office, Judge Carey's courtroom deputy will consult with the Judge to determine the appropriate course of action and counsel will be so advised.

3. *Rule 52(c) Motions*

Such motions are permitted under Fed. R. Bankr. P. 7052 and 9014 and may be made orally or in writing.

4. *Examination of Witnesses or Argument by More Than One Counsel*

Judge Carey will permit more than one attorney for a party to examine different witnesses or argue different points of law if permission is asked in advance of any such examination and the circumstances warrant.

5. *Examination of Witnesses Beyond Redirect*

Judge Carey does not favor examination of a witness after redirect and recross.

6. *Presentation of Evidence*

a. *Use of Rule 43(e) Affidavits*

Judge Carey permits the use of Rule 43(e) affidavits in lieu of testimony if the parties consent to their use. Absent valid objection, Judge Carey will permit an expert appraiser's written report to be substituted for direct examination of the appraiser if the report has been served upon opposing parties prior to the hearing and if the appraiser is available for cross examination and redirect examination.

b. *Marking of Exhibits and Number of Copies*

Exhibits should be premarked and exchanged with opposing counsel prior to the hearing. The original exhibit should be given to the witness during his or her testimony and counsel should have sufficient copies of each exhibit for the court and all parties as it is being used. When the exhibits are particularly numerous, a binder and index may facilitate the trial. If any party objects to the court viewing exhibits or a particular exhibit during the trial, the court will refrain from doing so until it is admitted into evidence.

c. *Offering Exhibits in Evidence*

Exhibits should ordinarily be offered in evidence at the conclusion of the party's case in chief, unless otherwise justified by the circumstances.

d. Need for Presentation of Evidence if Uncontested

If the moving party must demonstrate “cause” for relief, or if the moving party requests that findings be made, evidence may be required even if the motion is uncontested if the court is unable to make such findings on the basis of the pleadings alone. In such cases, the Judge will normally accept a proffer or affidavit.

ADVERSARY PROCEEDINGS

1. Discovery Matters

a. Length of Discovery Period and Extensions

After the answer to the complaint is filed, a pretrial order will be entered establishing discovery deadlines, setting a date for submission of a joint pretrial statement and scheduling a pretrial/settlement conference date. A copy of Judge Carey’s standard pretrial order is attached. Extensions of deadlines which do not affect a trial date and to which the parties agree may be made by stipulation, which must be submitted to the court for approval. Otherwise, a motion will be required. The court may decide the motion on the papers, schedule a conference call or set the matter for hearing.

b. Discovery Conferences and Dispute Resolution

Judge Carey will entertain conference calls for the purpose of resolving discovery disputes. Requests for sanctions may be made only by written motion.

c. Confidentiality Agreements

Judge Carey will consider approval of confidentiality agreements within the bounds of Section 107 of the Bankruptcy Code and federal common law.

d. Expert Witnesses

Judge Carey requires the advance identification of expert witnesses in the joint pretrial statement as provided in the pretrial order.

2. *Pretrial Conferences*

A final pretrial/settlement conference will typically be scheduled in the pretrial order. However, Judge Carey may enter a form of pretrial order which schedules an initial pretrial conference or status hearing. Judge Carey will entertain requests for other pretrial conferences by telephone or otherwise as the circumstances warrant.

3. *Filing of Memoranda and Briefs*

a. *Pretrial*

Each party may file a trial memorandum with the Clerk of Court provided it is served on opposing counsel and a copy delivered to chambers five days prior to the trial date.

b. *Post Trial*

Post-trial memoranda are necessary only when specifically requested by the court; however, Judge Carey will normally approve requests from the parties to submit the same.

c. *Reply and Surreply Memoranda and Briefs*

The complete briefing schedule will ordinarily be established at the conclusion of the trial. Briefs not otherwise authorized at that time should not be submitted and will not be considered.

4. *Mediation*

The pretrial order will ask counsel to consider participation in the mediation program. If all parties agree, a mediator will be assigned. If parties do not identify a proposed mediator in their communication to the court indicating their willingness to mediate, the court will appoint a mediator from among the approved list of mediators. *Mediation will not suspend any of the deadlines established in the pretrial order.*

ARBITRATION

1. *General Approach to Arbitration Cases*

Adversary proceedings will be assigned to compulsory arbitration in accordance with Local Bankruptcy Rule 9019-2.

2. *Scheduling of Trial De Novo from Arbitration*

Once a trial de novo is demanded, Judge Carey will generally issue a pretrial order directing the filing of a joint pretrial statement and setting a date for trial.

TRIAL PROCEDURE

1. *Scheduling of Cases*

Proceedings will be scheduled for trial at a pretrial conference.

2. *Matters Involving Out-of-Town Parties or Witnesses*

Judge Carey will try to accommodate out-of town parties or witnesses when scheduling trials. Counsel should make the court aware of such circumstances at the pretrial/settlement conference.

3. *Side Bars*

Side-bar conferences will be entertained when necessary.

4. *In Limine Motions*

Judge Carey's pretrial order contains a deadline for the filing of such motions.

5. *Opening Statements and Summations*

Opening statements and summations should be brief and concise, limited to discussion of facts in evidence and applicable law.

6. *Examinations of Witnesses Out of Sequence*

Judge Carey will permit counsel to examine witnesses out of turn if all parties consent or for the legitimate convenience of the witnesses.

7. *Videotaped Testimony*

Judge Carey will permit the use of videotaped testimony to the extent agreed by all parties or as allowed by the Federal Rules of Bankruptcy Procedure. Arrangement to have equipment set up in the courtroom and/or cleared through security should be done in advance by contacting his courtroom deputy.

INJUNCTIONS

1. *Scheduling and Expedited Discovery*

Hearings on motions for temporary restraining orders or preliminary injunctions are scheduled in the same manner as requests for expedited hearings in contested matters.

Requests for expedited discovery should be filed and served upon opposing parties. Courtesy copies of all documents seeking expedited relief should be sent to chambers. The requests will be determined summarily after opposing parties have had a reasonable opportunity to respond.

2. *Proposed Findings of Fact and Conclusions of Law*

Judge Carey usually requires such submissions.

**COURTROOM DECORUM AND CONDUCT OF COUNSEL
IN MATTERS PENDING BEFORE JUDGE CAREY**

Judge Carey believes that the resolution of disputes, whether by agreement or by the court after a matter is ripe for decision, and that the progress of a case under title 11 U.S.C. can be either greatly aided or impeded by the attitudes and behavior of counsel and the parties involved in the proceeding. Judge Carey, therefore, subscribes to the Principles of Professionalism adopted by the Board of Governors of the Philadelphia Bar Association on September 20, 2000, as well as the Code of Civility, adopted by the Supreme Court of Pennsylvania by Order dated December 6, 2000. In August, 1998, the American Bar Association House of Delegates adopted “Guidelines for Litigation Conduct.” Links to sites where these are reproduced in full follow. Counsel are encouraged to read each of these and become familiar with them.

-  [*Philadelphia Bar Association Principles of Professionalism*](#)
-  [*Pennsylvania Supreme Court Code of Civility*](#)
-  [*American Bar Association Guidelines for Litigation Conduct*](#)

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re	:	CHAPTER
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		:
		:
Debtor.	:	Bankruptcy No.
		:
		:
		:
Plaintiff	:	
v.	:	
		:
		:
Defendant	:	ADVERSARY NO.
		:

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PRETRIAL ORDER #1

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AND NOW, this ____ day of _____, 2001, the plaintiff(s) having filed an adversary proceeding and the defendant(s) having filed a responsive pleading, it is hereby **ORDERED** that:

1. On or before **(21 days from date of order)**, the parties shall submit to chambers a joint statement whether they would consent to participate in the court-annexed mediation program. The joint statement may include up to three suggested mediators from the list of certified mediators, which list may be obtained from the Clerk. If the joint statement

contains no suggested mediator(s), then the Court will choose one. If a party declines to so participate, said party shall state a reason for such declination.

2. On or before **(21 days from date of order)**, counsel shall have held and concluded the mandatory discovery conference pursuant to Fed.R.Civ.P. 26(f), incorporated into these proceedings by Fed.R.Bankr.P. 7026. During said conference, the parties shall consider, as part of their deliberations on how to proceed with discovery, the discovery and pretrial schedule detailed below in this order.

3. On or before **(35 days from date of order)**, after the conclusion of the parties' discovery conference, should the parties propose a discovery or pretrial schedule that differs from the one below, they shall file with the bankruptcy court a report on discovery, as mandated by Fed.R.Civ.P. 26(f). The parties shall detail those differences in their Rule 26(f) report, along with the reasons therefor. The court may, when appropriate, order a hearing based on the information found in the Rule 26(f) report. If the parties are in agreement with the discovery schedule outlined herein, no report need be filed unless there are objections to the initial discovery disclosures.

4. On or before **(35 days from date of order)**, after the conclusion of the Rule 26(f) conference, the parties shall provide the initial disclosures detailed in Fed.R.Civ.P. 26(a)(1). Any objections to the initial discovery disclosures required by Fed.R.Civ.P. 26(a)(1) shall be clearly raised in a Rule 26(f) report.

5. The following discovery and trial schedule shall be considered by the parties in their deliberations at their discovery conference:

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- a. All motions to amend the pleadings, or for summary judgment, shall be filed on or before **(120 days from date of order)**.
 - b. All motions in limine (other than motions objecting to initial disclosures) shall be filed on or before **(120 days from date of order)**.
 - c. All discovery shall be completed on or before **(90 days from date of order)**.
 - d. All expert witnesses shall be identified and a copy of each expert's report shall be provided to every other party, in accordance with Fed.R.Civ.P. 26(a)(2) on or before **(71 days from date of order)**.
 - e. All discovery disclosures pursuant to Fed.R.Civ.P. 26(a)(3) shall be served on opposing parties and filed with the bankruptcy court on or before **(130 days from date of order)**.
 - f. Any objections to Rule 26(a)(3) disclosures shall be served on opposing counsel and filed with the bankruptcy court on or before **(130 days from date of order)**.
 - g. On or before **(150 days from date of order)**, the parties shall file a joint pretrial statement and file a copy with chambers. The joint pretrial statement shall be signed by all counsel. It is the obligation of the plaintiff's counsel to initiate the procedures for its preparation and to assemble and submit the proposed pretrial statement to the court. Plaintiff's counsel shall submit a proposed joint pretrial statement to defendant's counsel not less than 7 days prior to the deadline for its submission.

Counsel are expected to make a diligent effort to prepare a proposed pretrial statement in which will be noted all of the issues on which the parties are in agreement and all of those issues on which they disagree. The proposed pretrial statement shall govern the conduct of the trial and shall supersede all prior pleadings in the case. Amendments will be allowed only in exceptional circumstances and to prevent manifest injustice.

The joint pretrial statement shall be in the following form:

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- (1) Basis of jurisdiction. (including a statement whether this matter is core or noncore). If the matter is noncore, the parties shall state whether they consent to the court's entry of a final order pursuant to 28 U.S.C. § 157(c)(2). If the parties disagree, they shall each cite to relevant authority to support their positions.
 - (2) Statement of uncontested facts.
 - (3) Statement of facts which are in dispute. [No facts should be disputed unless opposing counsel expects to present contrary evidence on the point of trial, or genuinely challenges the fact on credibility grounds.]
 - (4) Damages or other relief. A statement of damages claimed or relief sought. A party seeking damages shall list each item claimed under a separate descriptive heading, shall provide a detailed description of each item and state the amount of damages claimed. A party seeking relief other than damages shall list the exact form of relief sought with precise designations of persons, parties, places and things expected to be included in any order providing relief.
 - (5) Legal issues presented and the constitutional, statutory, regulatory and decisional authorities relied upon. (Counsel should include a brief statement regarding which party has the burden of proof on each legal issue).
 - (6) Witnesses listed in the order they will be called along with a brief statement of the evidence the witness will give. Witnesses shall be classified between those who any party expects to present and those whom any party may call if the need arises., If no already provided to all parties, the address and telephone number of each witness shall be disclosed.
 - (7) A list of all exhibits to be offered into evidence which shall be serially numbered and physically marked before trial in accordance with the schedule. Documents which a party may offer if the need arises shall be separately identified.
 - (8) A list of each discovery item and trial deposition to be offered into evidence. (Counsel shall designate by page portion of deposition testimony and by number the interrogatories which shall be offered in evidence at trial).
 - (9) Estimate trial time.
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- (10) A certification that the parties have attempted good faith settlement discussions without success.
- h. A mandatory final pretrial/settlement conference shall be held on **[approximately 1 week after date pretrial statement is due]** in Bankruptcy Courtroom No. 1, Robert N.C. Nix Federal Building & Courthouse, 900 Market Street, Second Floor, Philadelphia, Pennsylvania.
- i. If the adversary proceeding is not resolved prior to the conclusion of the final pretrial/settlement conference, the adversary proceeding shall be set down for trial at the Court's first available date. Each party may file five (5) days prior to the date of trial a trial memorandum with service on the opposing party and a courtesy copy delivered to Chambers. **The trial may be continued only in exceptional circumstances on motion to and leave of the Court.**

KEVIN J. CAREY
UNITED STATES BANKRUPTCY JUDGE