

## **JUDICIAL PRACTICES AND PROCEDURES**

### **BANKRUPTCY JUDGE BRUCE FOX**

**Judge Fox received a B.S. degree from the State University of New York at Stony Brook in 1971 and a J.D. degree from Harvard University Law School in 1975. He was appointed United States Bankruptcy Judge for the Eastern District of Pennsylvania on October 1, 1986.**

### **PRELIMINARY GENERAL MATTERS**

*1. Correspondence With the Court*

Judge Fox discourages correspondence from counsel to the Court, and generally will not consider correspondence that should properly be the subject of motion practice. Counsel should not, by letter, raise or answer substantive issues or seek advice from the Court.

*2. Communications With Law Clerk*

Judge Fox does not permit his law clerk to provide legal advice, to discuss legal issues, or to schedule matters. The scheduling of trials, hearings and most conferences is the responsibility of Judge Fox's Courtroom Deputy.

*3. Telephone Conferences and Use of Facsimile Machines*

Judge Fox does not accept facsimile transmissions. He will on occasion hold telephone conferences when the issues warrant.

*4. Pro Hac Vice Admissions*

Judge Fox prefers that written requests for admission *pro hac vice* be submitted in accordance with Local Bankruptcy Rule 2090-1(c). Oral motions may be made in open court at the time of the hearing or trial.

*5. Chambers Copies of Filed Papers*

Judge Fox prefers that no chambers copies of pleadings or memoranda be submitted unless he specifically requests copies.

## LITIGATION GENERALLY

### 1. *Continuances and Extensions*

#### a. *General Policy*

If *all* parties in interest agree, requests for a continuance will be granted and can be arranged by telephone through the Courtroom Deputy, unless the trial or hearing has been specially listed by the Court, or unless multiple continuances have already been granted.

#### b. *Need for Filing Formal Stipulation or Motion*

If all parties in interest will not agree to a postponement, or if the matter has been specially listed or postponed more than twice, a written request, or an oral request at the hearing, will be required. A postponement will only be granted if statutorily permissible, if it is genuinely necessary, and if the delay is unlikely to cause prejudice.

#### c. *Need for Court Appearance*

A court appearance will be required when a postponement cannot be obtained through communication with the Courtroom Deputy.

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

#### a. *Contested Matters*

Judge Fox does not require proposed findings and conclusions unless he so requests at the conclusion of the hearing, or unless the parties so request at that time.

#### b. *Adversary Proceedings*

Judge Fox does not require proposed findings and conclusions unless he so requests at the conclusion of the trial or unless the parties so request at that time.

### 3. *Reading of Material Into the Record*

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

#### 4. *Settlements*

##### *a. General Approach*

Judge Fox will generally not become involved in settlement discussions, except where all parties in interest so request at a pretrial conference or during a hearing.

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

When all parties in interest so request, and mediation is either inappropriate or has been unsuccessful, settlement conferences can be arranged with another Bankruptcy Judge.

##### *c. Need for Court Appearance*

To the extent court approval of any settlement is sought, the provisions of Fed. R. Bankr. P. 9019 must be followed, if applicable. An objection to a settlement motion will require a court appearance.

### **CONTESTED MATTER PRACTICE AND PROCEDURE**

#### 1. *In General*

Hearing dates for contested matters are obtained by using the procedure found in Local Bankruptcy Rule 5070-1(a). In many, but not all, instances the courtroom deputy will have recorded a message informing counsel of available hearing dates.

#### 2. *Filing Memoranda of Law/Briefs*

##### *a. Before Hearing*

Memoranda are necessary only if Judge Fox has requested. Otherwise, the parties may file memoranda if they so choose.

##### *b. After Hearing*

Memoranda are necessary only if a briefing schedule has been established at the conclusion of the hearing. If a party desires to submit a post-hearing memorandum, that request will normally be approved.

*c. Reply and Sur-reply Memoranda/Briefs*

The intent of a party to file a reply memorandum will usually be determined at the conclusion of the hearing. Sur-reply memorandum will rarely be included in a post-hearing briefing schedule.

*3. Scheduling of Expedited Hearings*

A request for an expedited hearing should conform with Local Bankruptcy Rule 5070-1(f). If granted, the Courtroom Deputy will inform movant's counsel of the hearing date, the parties upon whom movant's counsel should provide notice, and the deadline for providing service to other parties in interest. Generally, the content of the notice will not be addressed in advance, as it is anticipated that the moving party will provide adequate notice.

*4. Rule 52(c) Motions*

Such motions are permitted under Fed. R. Bankr. P. 7052 and 9014.

*5. Examination of Witnesses or Argument by More Than One Attorney*

Judge Fox will permit more than one attorney for a party to examine different witnesses or argue different points of law in complex matters.

*6. Examination of Witnesses Beyond Redirect and Recross*

Judge Fox will rarely permit the examination of a witness after redirect and recross.

*7. Presentation of Evidence*

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

Judge Fox does not use affidavits in lieu of testimony in contested matters unless the parties so agree. However, he may suggest in certain instances that an expert appraiser's written report serve in lieu of direct examination, where the report has been served upon opposing parties prior to the hearing and where the expert appraiser is available for cross-examination and redirect examination. *See In re Adair*, 965 F.2d 777 (9th Cir.1992).

*b. Marking of Exhibits and Number of Copies*

Exhibits may, but need not, be pre-marked. Counsel need the original exhibit for the

witness and should have a copy of the exhibit for every other party present. Unless requested, no copy for the Court is necessary.

*c. Offering Exhibits in Evidence*

Exhibits should be offered in evidence just prior to the conclusion of the party's case-in-chief.

*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 (*e.g.*, as in section 363 motions), evidence may be required even if the motion is uncontested.

## **ADVERSARY PROCEEDINGS**

*1. Discovery Matters*

*a. Length of Discovery Period and Extensions*

A pretrial order will be entered establishing a discovery deadline. That deadline will usually be extended when all parties believe an extension is warranted.

*b. Discovery Conferences and Dispute Resolution*

In limited circumstances, discovery disputes may be resolved by telephone conference. In most instances, they will be resolved upon written motion after a hearing. See Local Bankruptcy Rule 7026-1(c).

*c. Confidentiality Agreements*

Judge Fox will only approve confidentiality agreements in those extremely narrow circumstances permitted by Section 107 of the Bankruptcy Code and by federal common law. *E.g.*, *Pansy v. Ottaway Newspapers, Inc.*, 23 F.3d 772 (3d Cir.1994).

*d. Expert Witnesses*

Judge Fox will require that expert witnesses be identified in a joint pretrial statement along with a brief summary of the testimony the expert is likely to present at trial. In addition, Fed. R. Bankr. P. 7026 incorporates Fed. R. Civ. P. 26(a)(2) and (b)(4).

## 2. *Pretrial Conferences*

Judge Fox will schedule a pretrial conference in adversary proceedings. The date and time of the conference will be fixed by a pretrial order entered shortly after defendant's answer is filed. The parties will usually be directed to file a joint pretrial statement (in the form established by Local Bankruptcy Rule 7016-1(b)) one week prior to the conference.

## 3. *Filing of Memoranda and Briefs*

### a. *Pretrial*

Memoranda are necessary only if Judge Fox has requested them. Otherwise, the parties may file memoranda if they so choose.

### b. *Post-Trial*

Memoranda are necessary only if a briefing schedule has been established at the conclusion of the trial. If a party desires to submit a post-trial memorandum, that request will generally be approved.

### c. *Reply and Sur-reply Memoranda and Briefs*

The intent of a party to file a reply memorandum will usually be determined at the conclusion of the trial. Surreply memorandum will rarely be included in a post-trial briefing schedule.

## 4. *Mediation*

Judge Fox will request, as part of a pretrial order entered in almost all adversary proceedings, that the parties inform him in writing whether they will agree to participate in mediation. If all parties agree, a mediator will be assigned. Mediation will then proceed in accordance with Local Bankr. R. 9019-3.

## **ARBITRATION**

### 1. *General Approach to Arbitration Cases*

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 Fox will usually issue an order directing the parties to file a joint pretrial statement within 14 days. Thereafter, the proceeding will be considered ready for trial.

### **TRIAL PROCEDURE**

1. *Scheduling of Cases*

Proceedings will either be scheduled for trial at a pretrial conference or upon notice shortly after the conclusion of the conference.

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

Judge Fox will attempt to accommodate out-of-town parties, counsel and witnesses when scheduling trials. Video conferencing equipment is available for such situations.

3. *Side Bars*

Side-bar conferences may be sought when necessary.

4. *In Limine Motions*

A deadline for *in limine* motions will be established by pretrial order so as not to delay trial.

5. *Opening Statements and Summations*

Generally, no time limits are placed on opening statements or summations by counsel.

6. *Examination of Witnesses Out of Sequence*

Judge Fox will permit counsel to examine witnesses out of turn at the request of all parties or for the legitimate convenience of the witnesses.

7. *Videotaped Testimony*

Judge Fox will permit the use of videotaped testimony to the extent agreed to by all parties or as allowed by the Federal Rules of Bankruptcy Procedure.

## **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. They will be determined summarily after opposing parties have had reasonable opportunity to respond.

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

Judge Fox does not require such submissions unless the parties are informed otherwise.