

## JUDICIAL PRACTICES AND PROCEDURES

### U.S. BANKRUPTCY JUDGE ERIC L. FRANK

Judge Frank assumed office on February 14, 2006. Judge Frank received his J.D. in 1976 from the University of Pennsylvania Law School and his B.A. in 1973 from the State University of New York at Binghamton.

### PRELIMINARY GENERAL MATTERS

1. *Correspondence With the Court*

Judge Frank discourages unsolicited correspondence from counsel. Judge Frank will, however, occasionally invite and/or direct counsel to report on the status of matters via letters. Otherwise, Judge Frank will not consider matters raised via correspondence that should be raised properly by motion practice. All correspondence which relates to Judge Frank's calendar must be directed to the courtroom deputy, Pamela Blalock, telephone number (215) 408-2801; e-mail address: [pamela\\_blalock@paeb.uscourts.gov](mailto:pamela_blalock@paeb.uscourts.gov).

2. *Communications With Law Clerk*

Judge Frank 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.

3. *Telephone Conferences and Use of Facsimile Machines*

Judge Frank welcomes the use of telephone conferences, provided that all pertinent parties are available to participate. The Judge's courtroom deputy generally handles the scheduling of telephone conferences. ***Parties participating in telephone conferences must use a "land line" telephone; use of cell phones is not permitted.***

Judge Frank does not accept facsimile correspondence or pleadings from counsel unless requested and approved in advance.

4. *Pro Hac Vice Admissions*

Judge Frank 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 Frank 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 Frank 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.

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 favors resolution of the dispute by conference call arranged by the parties. Depending upon the nature of the case and its posture, the Judge may require that a written motion be filed in lieu of a conference. The parties should contact the Judge's courtroom deputy to ascertain the Judge's preference in a particular case.

c. Need for Court Appearance

If Judge Frank determines that a written motion is required, he may dispose of a contested continuance request on the papers alone without awaiting a response. He may require a response. Counsel will be advised in advance if a court appearance will be necessary.

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

Judge Frank 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 may, 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 Frank usually will not permit the reading of substantial material into the record.

4. *Settlements*

a. *General Approach and Philosophy*

Judge Frank actively encourages settlement discussions and will participate in telephone conferences or chambers settlement conferences if all parties in interest agree. Judge Frank 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 courtroom deputy. ***Parties participating in telephone conferences must use a "land line" telephone; use of cell phones is not permitted.***

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 Frank'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

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settlement will require a court appearance. Otherwise, if a certification of no response has been filed, counsel may check with the Courtroom Deputy to determine if an appearance is necessary.

### 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 Frank's courtroom deputy by telephone that the matter is uncontested. If however, a moving party is aware 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.

### APPEARANCE IN COURT

The following are matters in which appearance by counsel is almost always required, even in the absence of objection or response:

1. *Motions to withdraw as debtor's counsel*
2. *Motions requesting that a dismissal order or order granting relief from the automatic stay include provisions that restrict the filing of new bankruptcy cases or that provide in rem relief;*
3. *Motions to reconsider or to vacate orders dismissing or closing a case;*
4. *Motions to impose a stay under 11 U.S.C. §105 (but not under §362(c)(4));*
5. *Motions for sale of property pursuant to 11 U.S.C. §363; and*
6. *Motions for default judgments in adversary proceedings.*

Counsel may request permission to appear by telephone on such uncontested matters, particularly if counsel is located away from the general vicinity of the Courthouse. Such requests should be directed to Judge Frank's courtroom deputy well in advance of the scheduled hearing date, and will be considered on a case-by-case basis. ***Parties participating by telephone must use a "land line" telephone; use of cell phones is not***

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*permitted.*

## **APPEARANCE BY TELEPHONE CONFERENCE OR VIDEO CONFERENCE**

Counsel are generally expected to appear in person at scheduled trials, hearings and conferences. However, there are sometimes circumstances under which counsel may be permitted to appear via telephone or videoconference, such as at pretrial conferences when one or both counsel are not located in the general vicinity of the Courthouse, or on a matter that the Court itself has scheduled for hearing because of questions Judge Frank may wish to direct to counsel. See L.B.R 9076-1. Requests for appearance by telephone should be directed to the courtroom deputy, Pamela Blalock, phone number (215) 408-2801; e-mail address: [pamela\\_blalock@paeb.uscourts.gov](mailto:pamela_blalock@paeb.uscourts.gov).

## **CONTESTED MATTER PRACTICE AND PROCEDURE**

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

#### *a. Before Hearing*

Judge Frank ordinarily does not require that memoranda of law be filed prior to a hearing. If a party chooses to file a pre-hearing memorandum of law, a copy should be served on other interested parties.

#### *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 generally will be permitted if requested and will be included in any briefing order entered by the court. If a briefing schedule has been established and does not include reply and surreply memoranda, requests to file such memoranda should be directed initially to Judge Frank's courtroom deputy and will be considered on a

case-by-case basis.

2. *Scheduling of Expedited Hearings*

Local Bankruptcy Rule 9014-2 and 5070-1(g) govern requests for expedited hearings. Upon the filing of a motion for expedited hearing with the Clerk's Office, Judge Frank's courtroom deputy will consult with the Judge to determine the appropriate course of action and counsel will be so advised. ***In matters in which relief is requested that directly affects one (1) or more specific respondents, consistent with the Local Rule, Judge Frank ordinarily will not grant or schedule an expedited hearing unless the movant's counsel confers with the respondent(s)' counsel regarding their consent to an expedited hearing and their availability for the requested expedited hearing.***

When submitting a proposed order for the scheduling of an expedited hearing, counsel are encouraged to use the form of order posted on the court website at

[http://www.paeb.uscourts.gov/sites/paeb/files/OrderGrantingExpeditedHearing\\_120517.pdf](http://www.paeb.uscourts.gov/sites/paeb/files/OrderGrantingExpeditedHearing_120517.pdf)

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 Frank 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*

If Judge Frank chooses to direct questions to a witness, he will usually do so after direct and cross-examination has been completed and before counsel is offered the opportunity for redirect and recross examination. Judge Frank does not favor examination of a witness after redirect and recross.

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6. Presentation of Evidence

a. Use of Rule 43(c) Affidavits

Judge Frank permits the use of Rule 43(c) affidavits in lieu of testimony if the parties consent to their use. With the consent of all parties, Judge Frank also will: (1) accept an offer of proof in lieu of actual testimony; and (2) 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 all parties as it is being used. Judge Frank does not require, but does encourage, counsel to provide a courtesy copy of an exhibit for his review on the bench during the testimony. However, if any party objects to the court viewing exhibits or a particular exhibit during the trial, Judge Frank will refrain from doing so until it is admitted into evidence or until an objection over its admission must be resolved, except to the extent necessary to make evidentiary rulings or to rule on the admissibility of the document.

When the exhibits are particularly numerous, Judge Frank encourages the use of a binder and index so as to facilitate the trial.

c. Offering Exhibits in Evidence

Exhibits should ordinarily be offered in evidence at the conclusion of the party's case, rather than during the midst of the presentation of the case, 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 appropriate circumstances, Judge Frank will accept a proffer or affidavit.

e. *Need for Joint Pretrial Statement*

Counsel are expected to advise the Court well in advance of the scheduled hearing date if any contested matter (including objections to a claim) will likely involve multiple witnesses, extensive use of documentary evidence of complex legal issues. Upon receipt of such advise from counsel, Judge Frank may engage in more active pre-hearing management of the matter, which may include requiring the submission of a joint pretrial statement in the form prescribed by his pretrial order (included at the end of these materials).

## **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 Frank’s standard pretrial order is attached. Extensions of deadlines which do not affect a scheduled 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 Frank will entertain conference calls for the purpose of resolving discovery disputes. Requests for sanctions may be made only by written

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motion.

*c. Confidentiality Agreements*

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

*d. Expert Witnesses*

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

*2. Pretrial Conferences*

If circumstances warrant, Judge Frank may schedule an initial pretrial conference or status hearing early in the proceeding. Typically, a final pretrial/settlement conference will be scheduled in the pretrial order. Judge Frank will entertain requests for other pretrial conferences by telephone request directed to the courtroom deputy or judicial assistant. Usually, such requests will be granted by telephone request only if all parties agree. Otherwise, a written request should be filed.

*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 five (5) days prior to the trial date.

*b. Post Trial*

Post-trial memoranda are necessary only when specifically requested by the court; however, Judge Frank 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. If a briefing schedule has been established and does

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not include reply and surreply memoranda, requests to file such memoranda should be directed initially to Judge Frank's courtroom deputy and will be considered on a case-by-case basis.

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 automatically 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 Frank 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 Frank will try to accommodate out-of town parties or witnesses when scheduling trials. Counsel should make the court aware of such circumstances at

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the pretrial/settlement conference.

3. Side Bars

Side-bar conferences will be entertained when necessary.

4. In Limine Motions

Judge Frank'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 Frank 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 Frank 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 Frank usually requires such submissions.

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

Judge Frank 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 Frank, therefore, subscribes 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.

 [\*Pennsylvania Supreme Court Code of Civility\*](#)

 [\*American Bar Association Guidelines for Litigation Conduct\*](#)

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

<b>In re</b>	:	<b>Chapter</b>
	:	
<b>Debtor(s)</b>	:	<b>Bky. No.</b>
	:	
	:	
<b>Plaintiff(s)</b>	:	
	:	
v.	:	
	:	
	:	
<b>Defendant(s)</b>	:	<b>Adv. No.</b>
	:	

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**PRETRIAL ORDER #1**  
 .....

**AND NOW**, it is hereby **ORDERED** that:

1. If not already filed, any party that is subject to Fed. R. Bankr. P. 7007.1 shall file the required disclosure on or before **(7 days)**.
2. On or before **(21 days)**, the parties shall file a joint statement whether they consent to participate in the court-annexed mediation program and transmit a copy of the joint statement to chambers. 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 requests mediation but contains no suggested mediator(s), then the Court will choose one.
3. On or before **(21 days)**, 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 discuss how to proceed with general discovery and electronic discovery and shall consider whether the discovery and pretrial schedule detailed below in this order is appropriate in this proceeding.

4. **On or before (28 days)**, the parties shall provide the initial disclosures detailed in Fed. R. Civ. P. 26(a)(1). Any objections to the propriety of requiring the initial discovery disclosures required by Fed. R. Civ. P. 26(a)(1), see Fed. R. Civ. P. 26(a)(1) (C), shall be set forth in the parties Rule 26(f) Report.
5. **On or before (42 days)**, 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 Rule 26(f) Report”). 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.
6. The following discovery and trial schedule shall be considered by the parties in their deliberations at their discovery conference:
  - a. 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 (84 days)**.
  - b. All discovery shall be completed **on or before (105 days)**.
  - c. All motions to amend the pleadings, or for summary judgment,<sup>1</sup> shall be filed **on or**

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<sup>1</sup> A motion for summary judgment shall include a separate statement of those material facts that the movant contends are not in dispute with supporting citations to the record. Failure to

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**before (126 days).** If such a motion or motions is/are filed, the parties are **not relieved** of their obligation to comply with the terms of the balance of this Pretrial Order.

- d. 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 (140 days)**.
- e. Any objections to Rule 26(a)(3) disclosures shall be served on opposing counsel and filed with the bankruptcy court **on or before (147 days)**.
- f. **On or before (161 days)**, the parties shall file a joint pretrial statement. 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.

7. The joint pretrial statement shall be in the following form:

- A. 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.
- B. Statement of uncontested facts.
- C. Statement of facts which are in dispute. [No facts should be disputed unless opposing counsel expects to present contrary evidence on the point at trial, or genuinely challenges the fact on credibility grounds.]
- D. 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

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comply with this requirement shall be grounds for summary denial of the motion.

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things expected to be included in any order providing relief.

- E. 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).
  - F. Witnesses listed 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 not already provided to all parties, the address and telephone number of each witness shall be disclosed.
  - G. 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.
  - H. Motion(s) In Limine: The parties shall identify any Motions *In Limine* that they believe need to be resolved prior to trial. The nature of the issue shall be described in sufficient detail to facilitate a discussion of the issue(s) at the final pretrial/settlement conference and to permit the court to issue an appropriate scheduling order, if necessary, for the filing and resolution of such Motion(s).
  - I. 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).
  - J. Estimated trial time.
  - K. A certification that the parties have attempted good faith settlement discussions without success.
8. A mandatory final pretrial/settlement conference shall be held on **(Date) at (time) in Bankruptcy Courtroom No. 1, Robert N.C. Nix Federal Building & Courthouse, 900 Market Street, Second Floor, Philadelphia, Pennsylvania.**
9. If the adversary proceeding is not resolved prior to the conclusion of the final pretrial/settlement conference, the adversary proceeding shall be scheduled for trial at the Court's first available date.
10. Each party may file, no later than five (5) days prior to the date of trial, a trial memorandum with service on the opposing part(y)(ies) and a courtesy copy delivered to Chambers.



11. All trial exhibits shall be pre-marked and exchanged by counsel at least three (3) business days prior to the date of trial.
12. **The trial may be continued only in exceptional circumstances on Motion and leave of Court.**

**Date:** \_\_\_\_\_

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**ERIC L. FRANK**  
**U.S. BANKRUPTCY JUDGE**