

JUDICIAL PRACTICES AND PROCEDURES

U.S. BANKRUPTCY JUDGE PATRICIA M. MAYER

Judge Mayer assumed office on March 11, 2020. Judge Mayer received her J.D. from Temple University, James E. Beasley School of Law and her B.A. from DeSales University.

PRELIMINARY GENERAL MATTERS

1. *Correspondence With the Court*

Judge Mayer discourages unsolicited correspondence from counsel. Judge Mayer will, however, occasionally invite and/or direct counsel to report on the status of matters via letters. Otherwise, Judge Mayer will not consider matters raised via correspondence that should be raised properly by motion practice. All correspondence which relates to Judge Mayer's calendar must be directed to the courtroom deputy, Barbara Spinka, telephone number (610) 208-5036; e-mail address: barbara_spinka@paeb.uscourts.gov.

2. *Communications With Law Clerks*

Judge Mayer permits counsel to speak directly with her law clerks, 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 Mayer 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. ***If parties choose to participate in telephone conferences, they may do so with either a cell phone or a "land line". However, use of the phone's speaker function is not permitted as it results in excess background noise.***

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

4. Pro Hac Vice Admissions

Judge Mayer 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 Mayer 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 Mayer 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 Mayer determines that a written motion is required, she may dispose of a contested continuance request on the papers alone without awaiting a response. She 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 Mayer 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 to brief certain issues.

3. *Reading of Material Into the Record*

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

4. *Settlements*

a. *General Approach and Philosophy*

Judge Mayer actively encourages settlement discussions and will participate in telephone conferences or chambers settlement conferences if all parties in interest agree. Judge Mayer will participate in such conferences only to the extent that her 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 Mayer'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, if a certification of no response has been filed, counsel may check with the courtroom deputy to determine if an appearance is necessary.

d. Reporting of Settlements

Settlements must be reported to the court at least 24 hours in advance of the hearing on the contested matter. If a settlement is not reported to the court within 24 hours, the parties must appear at the hearing as scheduled.

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 Mayer'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;*
6. *Motions for default judgments in adversary proceedings; and*
7. *Objections to proofs of claim.*
8. ***Requested continuances and proposed settlements must be reported to the court at least 24 hours in advance of the hearing on the contested matter. If a settlement is not reported to the court within 24 hours, the parties must appear at the hearing as scheduled.***

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 Mayer'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 may use a "land line" telephon or cell phone. However, use of the speaker function on either device is not 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 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 Mayer may wish to direct to counsel. See L.B.R 9076-1. Requests for appearance by telephone should be directed to the courtroom deputy, Barbara Spinka, telephone number (610) 208-5036; e-mail address: barbara_spinka@paeb.uscourts.gov.

CONTESTED MATTER PRACTICE AND PROCEDURE

1. Filing Memoranda of Law/Briefs

a. Before Hearing

Judge Mayer 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 all 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 generally permitted 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 Mayer'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 Mayer'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 Mayer 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.

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 Mayer 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 Mayer chooses to direct questions to a witness, she 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 Mayer does not favor examination of a witness after redirect and recross.

6. Presentation of Evidence

a. Use of Rule 43(c) Affidavits

Judge Mayer 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 Mayer 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 her or her testimony and counsel should have sufficient copies of each

exhibit for all parties. Judge Mayer does not require, but does encourage, counsel to provide a courtesy copy of an exhibit for her 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 Mayer 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 Mayer encourages the use of a binder with an index.

The Courtroom is equipped with technology that allows practitioners to use electronic exhibits. Counsel is encouraged to take advantage of this technology whenever possible in lieu of paper exhibits.

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 Mayer 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, or complex legal issues. Upon receipt of such advise from counsel, Judge Mayer 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 her 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 Mayer'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 Mayer 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 Mayer will consider approval of confidentiality agreements within the bounds of Section 107 of the Bankruptcy Code and federal common law.

d. Expert Witnesses

Judge Mayer 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 Mayer 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 Mayer 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 Mayer 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 not include reply and surreply memoranda, requests to file such memoranda should be directed initially to Judge Mayer'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 9019-1.

2. *Scheduling of Trial De Novo from Arbitration*

Once a trial de novo is demanded, Judge Mayer 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 Mayer 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 allowed when necessary.

4. *In Limine Motions*

Judge Mayer'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 Mayer 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 Mayer 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 her courtroom deputy.

8. Use of Technology in the Courtroom

Within reason and subject to consent of opposing counsel, Judge Mayer will allow parties to use technology - such as interactive flat screen displays and webcast testimony - in the courtroom during trials and contested hearings. Use of such technologies must be approved in advance by contacting the Judge's 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 Mayer usually requires such submissions.

**COURTROOM DECORUM AND CONDUCT OF COUNSEL
IN MATTERS PENDING BEFORE Judge Mayer**

Judge Mayer 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 Mayer, therefore, subscribes to 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**

In re	:	Chapter
	:	
Debtor(s)	:	Bky. No.
_____	:	
	:	
Plaintiff(s)	:	
v.	:	
	:	
Defendant(s)	:	Adv. No.
	:	

.....
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 their order is appropriate in their 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,¹ shall be filed **on or 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 their 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 the 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

¹ 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 comply with their requirement shall be grounds for summary denial of the motion.

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.

- 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, Fourth Floor, The gateway Building, 201 Penn Street, Reading, PA 19601.**
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.
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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: _____

PATRICIA M. MAYER
U.S. BANKRUPTCY JUDGE