# JUDICIAL PRACTICES AND PROCEDURES
# BANKRUPTCY JUDGE ASHELY M. CHAN

Judge Chan was appointed to the United States Bankruptcy Court for the Eastern District of Pennsylvania on October 1, 2014. Judge Chan received her B.A. from Douglass College, Rutgers University and J.D. from Rutgers Law School Camden.

## PRELIMINARY GENERAL MATTERS

### 1. Correspondence with the Court

Judge Chan generally discourages unsolicited correspondence from counsel and will not consider correspondence that should be the subject of motion practice. Judge Chan will, however, occasionally invite and/or direct counsel to report on the status of matters via letters. Otherwise, all correspondence that relates to Judge Chan's calendar must be directed to the Courtroom Deputy.

### 2. Communications with Law Clerks

Judge Chan permits counsel to speak directly with her Law Clerk, subject to the limitations that law clerks are not permitted to give legal advice or discuss the merits of pending cases. The scheduling of trials, hearings and most conferences is the responsibility of Judge Chan's Courtroom Deputy or, in the alternative, her Judicial Assistant.

### 3. Telephone Conferences and Use of Facsimile Machines

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

## 4. Pro Hac Vice Admissions

Judge Chan 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. The fee required under Local Bankr. R. 2090-1(c) must be paid whether the request for admission *pro hac vice* is made by written application and motion or by oral motion in open court.

## 5. Chambers Copies of Filed Papers

In adversary proceedings and Chapter 11 cases, Judge Chan would appreciate receiving chambers copies of documents (on double-sided paper) filed when the exhibits are voluminous. In all other situations, Judge Chan will accept courtesy or chambers copies of filed papers, but stresses to the Bar that this is in no way required absent specific request on her part.

# LITIGATION GENERALLY

## 1. Continuances and Extensions

a. General Policy Where Parties are in Agreement

Judge Chan generally is liberal with requests for continuances where all parties are in agreement. The request shall be made through the Judge's Courtroom Deputy by letter, if time permits, or by telephone (except for a request for an extension of the dates in a pretrial order which shall be made by stipulation with the consent of all parties or upon motion to the Court). As a matter of professionalism and civility, counsel should liberally consent to a reasonable request for a continuance, unless such a request materially prejudices their client.

b. Where the Request for a Continuance is Opposed

If a request for a continuance is opposed or the matter has been specially listed, Judge Chan expects counsel to raise the issue via a telephone conference call. Otherwise, the request for a continuance shall be presented by written motion sufficiently in advance of the hearing to allow the same to be disposed of prior to the originally scheduled date. If necessary, a request for expedited consideration should be made.

c. Need for Court Appearance

If written motions were required, Judge Chan may dispose of a contested continuance request on the papers alone and counsel will be advised in advance if a court appearance will be necessary. Otherwise, a court appearance will be required when a postponement cannot be obtained through communication with her Courtroom Deputy.

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

Judge Chan does not require proposed findings of fact and conclusions of law unless she specifically indicates so at the conclusion of the matter or proceeding in court. Judge Chan will generally permit the filing of same, upon request. Similarly, the Judge welcomes memoranda of law from the parties, and will generally refrain from deciding matters from the bench if the parties desire an opportunity to brief certain issues.

## 3. Reading of Material into the Record

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

## 4. Motions to Extend the Automatic Stay

Judge Chan requires that both the debtor and debtor's counsel appear in connection with hearings scheduled on motions to extend the automatic stay before she will consider granting such motion. In addition, counsel for the debtor must schedule a hearing on such motion before the expiration of the thirty (30) days after the debtor files for bankruptcy or the motion will be denied.

## 5. Settlements

a. Settlement Conferences

Judge Chan encourages settlement discussions and will entertain chambers settlement conferences if all parties in interest agree. However, Judge Chan will participate in such conferences only to the extent it will not jeopardize her role as a fact finder should a settlement not be reached successfully.

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 Appearances

Settlements should be reported promptly to Judge Chan's Courtroom Deputy and, if the matter is under advisement, also to her Law Clerk. The necessary motions to seek court approval must be filed pursuant to Federal Bankruptcy Rule 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

Judge Chan will enter orders in response to a timely filed certificate of no objection. To avoid appearance at the scheduled hearing, counsel should contact the Courtroom Deputy at least 24 hours prior to the hearing.

Certain matters require an appearance notwithstanding the absence of a filed answer or other response. They include:

1. Motions to withdraw as debtor's counsel;
2. Motions to reconsider or vacate orders;
3. Motions to extend or impose the automatic stay pursuant to § 362(c)(3) or (c)(4). The debtor seeking such relief shall also appear in connection with such motion;
4. Objections to proofs of claim. Depending on the nature of the objection, the applicable burden of proof may require a record to be made notwithstanding the absence of a response by the claimant;
5. Motions to sell property pursuant to § 363;
6. Motions under Fed. R. Bankr. P. 9019 to approve a settlement or compromise;
7. Motions requesting that a dismissal order include provisions which restrict the filing of a new bankruptcy case or which provide *in rem* relief;
8. Motions for default judgments in adversary proceedings.

Counsel may request permission to appear by phone on such uncontested matters, particularly if counsel is located away from the vicinity of the courthouse. Such requests should be directed to the Judge's Courtroom Deputy well in advance of the scheduled hearing date, and will be considered on a case-by-case basis.

## CONTESTED MATTER PRACTICE AND PROCEDURE

### 1. Filing Memoranda of Law/Briefs

a. Before Hearing

Judge Chan will consider pre-hearing briefs but they are not required. If prepared, all parties in interest must be provided with copies of pre-hearing briefs.

b. After Hearing

Memoranda are required only if a briefing schedule has been established at the conclusion of the proceedings in Court. Parties desiring to submit post-hearing memoranda ordinarily will be permitted to do so.

c. Reply and Surreply Memoranda/Briefs

Reply and surreply memoranda/briefs will be permitted if approved in advance, generally at the time a briefing schedule is established. Judge Chan will not consider any unsolicited reply memoranda filed without prior permission of the Court. Reply and surreply memoranda/briefs shall be no more than seven (7) pages in length absent prior court approval.

**2. Scheduling of Expedited Hearings**

Local Bankruptcy Rule 5070-1 governs motions for expedited hearings. Counsel are strongly encouraged to notify Judge Chan's Courtroom Deputy by telephone that a motion for expedited consideration will be filed. If the request is approved, the Courtroom Deputy will notify movant's counsel of the hearing date and time.

**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 Chan will permit more than one attorney for a party to examine a witness or argue different points of law if permission is asked in advance and under appropriate circumstances.

**5. Examination of Witnesses Beyond Redirect**

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

**6. Presentation of Evidence**

a. Use of Rule 43(e) Affidavits

When an expert witness will be providing an appraisal, Judge Chan permits counsel to submit the expert's written report in lieu of direct examination where (1) the party offering it served a copy upon opposing counsel prior to the hearing; and (2) the expert is available at the hearing for cross-examination and redirect examination. *See In re Adair*, 965 F.2d 777 (9th Cir. 1992).

For other witnesses, Judge Chan will generally permit the use of Rule 43(c) affidavits in lieu of testimony where: (i) all parties in interest consent; (ii) out-of-town witnesses are involved; and (iii) cross- examination can be held via telephone or video conference call.

b. Marking of Exhibits and Number of Copies

Exhibits must be premarked and exchanged with opposing counsel prior to the hearing Counsel needs the original for the witness and should have a copy of the exhibit for every other party present. When the exhibits are particularly numerous, a binder and index may facilitate the trial. A bench copy of exhibits is appreciated, but is not required absent advance notice thereof. If any party objects to the Court viewing an exhibit during the trial, the Court will refrain from doing so until the objection is resovled or the exhibit's admission is resolved.

c. Offering Exhibits in Evidence

Exhibits should be offered at the conclusion of the party's case-in-chief, unless 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 though the motion is uncontested if the Court is unable to make such findings on the basis of the pleadings alone. In appropriate circumstances, the Judge will accept a proffer or affidavit.

## ADVERSARY PROCEEDINGS

**1. Discovery Matters**

a. Length of Discovery Period and Extension

A pretrial order will be entered in all adversary proceedings and certain contested matters establishing a discovery deadline. A copy of Judge Chan's standard pretrial order is attached. Extensions of the deadlines generally will be given upon submission of a stipulation by consent of all parties or cause shown. 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 Chan 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 Chan will approve confidentiality agreements or orders subject to the limitations of statutory and common law.

d. Expert Witnesses

Judge Chan requires the advance identification of expert witnesses in the joint pretrial statement to be prepared in conformity with her standard pretrial order (copy attached).

e. eDiscovery

The pretrial order entered by Judge Chan requires that all electronic discovery issues be addressed by the parties as part of the Rule 26 discovery conferences.

**2. Pretrial Conferences**

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

**3. Filing of Memoranda and Briefs**

a. Pretrial

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

b. Post-trial

Post-trial memoranda are necessary only when specifically requested by the Court, however, Judge Chan liberally will approve requests from the parties to submit the same. The schedule for briefing will generally be established at the conclusion of the trial. In cases in which a transcript is being ordered by a party or parties, Judge Chan will generally permit the briefing schedule to commence after receipt of the transcript in the regular course of business.

c. Reply and Surreply Memoranda and Briefs

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

**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 the 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 the approved list of mediators. Judge Chan will not insist that the parties attempt mediation against their will, nor does she require parties to explain a decision not to participate in mediation. Mediation will not suspend any of the deadlines established in the pretrial order.

## ARBITRATION

**1. General Approach to Arbitration**

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 Chan generally will issue a pretrial order directing the filing of a joint pretrial statement and setting a date for trial.

## TRIAL PROCEDURE

**1. Scheduling of Cases**

Motions are assigned a hearing date in accordance with Local Bankruptcy Rule 5070-1. Adversary proceedings are assigned a trial date after the pretrial/settlement conference in accordance with the pretrial order.

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

Judge Chan endeavors to be as flexible as possible in matters involving out-of-town parties or witnesses when scheduling trials. Counsel should make the Court aware of such circumstances in the joint pretrial statement as required by the pretrial order.

**3. Side Bars**

Side-bar conferences are discouraged but will be entertained when necessary.

**4. In Limine Motions**

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

**5. Opening Statements and Summations**

Judge Chan will permit brief and concise opening and closing statements, but will sometimes suggest that the same be waived where pretrial memoranda have been submitted and/or post-trial memoranda are contemplated.

**6. Examination of Witnesses Out of Sequence**

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

**7. Videotaped Testimony**

Judge Chan 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. Arrangements to have equipment set up in the courtroom and/or cleared through security should be done in advance by contacting the Courtroom Deputy.

## INJUNCTIONS

**1. Hearings on Motions for Temporary Restraining Orders or Preliminary Injunctions**

Hearings on motions for temporary restraining orders or preliminary injunctions are viewed and scheduled in the same manner as requests for expedited consideration in contested

matters. Requests for expedited discovery are treated in the same fashion and should be filed and served upon opposing parties.

Double-sided courtesy copies of all filed 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 Facts and Conclusions of Law**

Judge Chan generally requires such submissions unless the parties are informed otherwise.

## COURTROOM DECORUM AND CONDUCT OF COUNSEL IN MATTERS PENDING BEFORE JUDGE CHAN

Judge Chan 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 the Bankruptcy Code can be either greatly aided or impeded by the attitudes and behavior of counsel and the parties involved in the proceeding. Judge Chan, 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 follows. 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) | : | |
| Plaintiff(s) | : | |
| v. | : | |
| Defendant(s) | : | |

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 indicating 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. **Within fourteen days of 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 therefore. The Court may, when appropriate, order a hearing based upon the information found in the Rule 26(f) report. If the parties are in agreement with the discovery schedule as outlined herein, no report need be filed unless there are objections to the initial discovery disclosures.

5. Within fourteen days 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.

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

A. All discovery shall be completed on or before **[90 days from the date of this Order]**.

B. 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 **[60 days from the date of this Order]**.

C. All motions to amend the pleadings or for summary judgment shall be filed on or before **[120 days from this 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 **[2 weeks after c above]**.

E. Any objections to the Rule 26(a)(3) disclosures shall be served on opposing parties and filed with the bankruptcy court on or before **[2 weeks after d above]**.

F. On or before **[30 days after e above]**, the parties shall file a joint pretrial statement consistent with the form set forth in paragraph 7 below 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, assemble and submit the proposed pretrial statement. 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 supersede all pleadings in the case. Amendments will be allowed only in exceptional circumstances and to prevent manifest injustice.

G. All motions *in limine* shall be filed on or before **[30 days after e above]**.

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

A. Basis of Jurisdiction. A statement setting forth the basis of jurisdiction and 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. A statement of the uncontested facts.

C. Statement of facts which are in dispute. A statement of the facts 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 provide, for each cause of action being pursued: (a) a detailed description of each item of damages claimed; (b) the legal authority for such damages and (c) the specific amount of damages claimed. A party seeking relief other than damages shall, for each cause of action being pursued, list the exact form of relief sought with precise designation of persons, parties, places and things expected to be included in any order for relief and the legal authority for such relief.

E. Legal issues. For the causes of action being pursued, identify the following: (i) the constitutional, statutory, regulatory and decisional authorities being relied upon for each cause of action; (ii) the elements which must be satisfied to prevail on each cause of action; and (iii) which party bears the burden of proof on each element. Also list any additional legal issues (*e.g.*, affirmative defenses) that will be relevant to the court's disposition of the matter, the authority pertinent to each legal issue, and the party which bears the burden on the issue.

F. Witnesses. A list of witnesses in the order in which they will be called, along with a brief statement of the evidence the witness will give. Witnesses shall be classified between those whom 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. 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. A list of each discovery item and trial deposition. 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/request for admissions which shall be offered into evidence.

I. Estimated trial time and scheduling issues: A statement of: (i) the estimated time which the trial will require; and (ii) any issues that should be considered in setting a trial date (e.g. witnesses traveling from out-of-state who will need notice of the trial date to make their travel plans).

J. Certification. A certification that the parties have attempted good faith settlement discussions without success.

8. A mandatory pretrial/settlement conference shall be held on _____, __, 20__, at ___ in Bankruptcy Courtroom No. 5, Robert N.C. Nix Federal Building & Courthouse, 900 Market Street, 2nd Floor, Philadelphia, Pennsylvania.

9. If the adversary proceeding is not resolved prior to the conclusion of the final pretrial/settlement conferences, the adversary proceeding shall be set down for trial at the Court's first available trial date. The trial may be continued only in exceptional circumstances on motion to and leave of Court.

10. Seven (7) or more days prior to the date of the trial, each party is required to provide: (i) a copy of exhibits to the opposing parties; and (ii) two copies of exhibits to chambers.

11. The Court may require each party to file (and, if not directed by the Court, each party may choose to file), five (5) days prior to the date of the trial, a pretrial memorandum with service on the opposing party and a courtesy copy delivered to chambers.

_____
Ashely M. Chan
United States Bankruptcy Judge

Copies to:

Plaintiff's Counsel

Defendant's Counsel

Courtroom Deputy
Barbara Townsend