Judges Buchanan and Hopkins Now Have Consistent Policies and Procedures on Motions to Shorten Response Time for Expedited Hearings

POLICIES AND PROCEDURES OF JUDGES BUCHANAN AND HOPKINS

Slide Index

Two Document Requirement

1. File the underlying substantive motion or application
2. File a separate motion for expedited hearing or disposition (*contemporaneously)*

Procedural Requirement

1. When filing underlying substantive motion or application
   a. In lieu of a twenty-one (21) day notice, include a *conspicuous statement* that a motion has been filed requesting an expedited hearing or to reduce the response time regarding the underlying motion or application
2. The time period to respond to the underlying substantive motion or application will be set forth in the Court's order on the motion for expedited hearing or disposition
3. The motion or application for expedited hearing or disposition shall be served as required by LBR 9073-1(b) or as otherwise ordered by the Court

Motion to Shorten Response Time

- Pursuant to LBR 9073-1(a), the motion shall set forth:
  - Description of relief requested;
  - Reasons for which an expedited hearing or disposition is requested;
  - Identity of all parties who may be affected by the relief requested in the underlying filing or paper;
  - Method of notification of all interested parties;
  - Proposed shortened notice or response period being sought and any proposed date or dates and time for any expedited hearing being sought.
  - Shall be accompanied by a proposed form of notice and proposed order, which, if signed, will set an expedited hearing date and/or shortened response time on the underlying filing

HYPOTHETICAL ISSUE

Debtor(s) need to sell property and the purported buyer has indicated that closing needs to happen within 20 days. Counsel seeks to file a Motion to Sell and shorten the response time on the Motion to 14 days.

How would counsel go about doing this pursuant to LBR 9073-1 and the Judges' unified Policy and Procedure?

Substantively Prepare Motion to Sell and Motion to Shorten Response Time

Motion to Sell Real Estate:

- In lieu of a twenty-one (21) day notice, the Motion shall contain a conspicuous statement that a motion has been filed requesting an expedited hearing and/or to reduce the response time regarding the underlying substantive motion or application.

PLEASE TAKE NOTICE THAT, on April 12, 2019, the Debtor filed a Motion to Sell Real Estate. Simultaneously, the Debtor filed a Motion to Shorten Time to Respond to the Motion to Sell Real Estate, in which the Debtor seeks to shorten the time for filing objections or responses to the Motion to Sell Real Estate to 14 days. The response deadline shall be set by order of the Court and served by the Debtor upon all parties entitled to service pursuant to LBR 9073-1(b).

Contemporaneously File Motion to Shorten Response Time and Motion to Sell

04/12/2019	70	Motion to Sell Real Estate Filed by Debtor John Doe (Orbesued, Sue) (Entered: 04/12/2019)
04/12/2019	71	Motion to Shorten Response Time *on Motion to Sell Real Estate (Doc. 70)* Filed by Debtor John Doe (Attachments: # 1 Proposed Notice # 2 Proposed Order) (Orbesued, Sue) (Entered: 04/12/2019)

As required by LBR 9073-1(a)

Pursuant to LBR 9073-1(b)

- If the court grants the request for shortened response time, then the requesting party shall serve the Order Granting Motion to Shorten Response Time, with copies of the Motion to Sell and the Proposed Form of Notice, on all parties required by LBR 9013-3.
- The requesting party shall also file a certificate of service certifying that the requesting party has provided notice and specifying the method by which such notice was provided.

04/13/2019	72	Order Granting Motion to Shorten Response Time on Motion to Sell Real Estate (Related Doc # 71) (Entered: 04/13/2019)
04/13/2019	73	Certificate of Service Filed by Debtor John Doe (RE: related document(s) # 72 Order on Motion to Extend/Shorten Time). (Orbesued, Sue) (Entered: 04/13/2019)

Contents of Certificate of Service

- Certify that copies of the following were served on the parties set forth in LBR 9013-3 (as required by LBR 9073-1(b)):
  - Order Granting Motion to Shorten Response Time,
  - Copy of Motion to Sell; and
  - A copy of the Proposed Form of Notice attached to the Motion to Shorten Response Time.
- Specify the method by which notice was provided

NOTE: If the response time is significantly reduced (7 days or less), then any directly affected party should be served by expedited means to ensure timely service.

Ex Parte Communications

- Part of the concern that arises when there is a high level of collegiality among bar members is lack of observation of the rule against ex parte communications. See Rule 9003. In my view, this proscription extends not only to myself, but also to my law clerk and, to a certain extent, my courtroom deputy.
  - Where does the request for procedural information stop and ex parte communication begin? In determining whether the conversation you intend to have with the court is an ex parte communication, consider whether your comments consist of arguments or statements why the court should, for example, grant your motion for expedited hearing. Once counsel begins advocating a position by stating reasons why his client should be granted an expedited hearing, whether because of some conduct on the part of the other party or otherwise, you are crossing the line.

Ex Parte Communications

- Limit your comments to procedural matters such as advising the law clerk or courtroom deputy of your need for an emergency hearing and your need for a date assignment for the proposed expedited hearing to place in the motion.
- All reasons for granting any motion should be put in the written motion and memorandum. This way, the court does not receive any additional information and/or comments that all parties have not heard and been given an opportunity to refute. See LBR 9013-1.

Ex Parte Communications

- Why the courtroom deputy? As a practical matter, courtroom deputies are extremely busy and simply do not have time to answer all your questions, especially ones that require a legal response or ones answerable by referring to the Local Rules or General Orders. Research the issues yourselves or ask an attorney in whose opinion you have trust.
- From time to time lawyers seek improperly to influence the court by dropping unflattering bits of information about the other side. These statements are not evidence, i.e., proof tending to make the existence of a fact that is of consequence more or less probable pursuant to Fed. R. Evid. 401, and are therefore inadmissible. This inappropriate conduct could possibly lead to sanctions if egregious enough.

Agreed Order as to Tax Refunds and Returns Prior to Confirmation

- *Entered in majority if not all cases*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE:	:	CASE NO.
		CHAPTER 13
DEBTOR	:	JUDGE JEFFERY P. HOPKINS

AGREED ORDER AS TO TAX REFUNDS AND RETURNS PRIOR TO CONFIRMATION

Debtor(s) and the Chapter 13 Trustee agree that any confirmation of debtor(s)' plan shall be subject to the follow conditions:

Pursuant to the plan as filed, Debtor(s) agree to file Tax Returns by April 15 of each year and provide a copy to Counsel to forward to the Trustee by April 30 of each year. Amended Schedules I, J and amended plan will be filed if income changes.

The plan provides as follows:
8. FEDERAL INCOME TAX RETURNS AND REFUNDS

8.1 Federal Income Tax Returns

If requested by the Trustee, the Debtor shall provide the Trustee with a copy of each federal income tax return filed during the Plan term by April 30 of each year.

8.2 Federal Income Tax Refunds

Notwithstanding single/joint tax filing status, the Debtor may annually retain the greater of (1) any earned income tax credit and/or additional child tax credit or (2) $3,000 of any federal income tax refund for maintenance and support pursuant to§ 1325(b)(2) and shall turnover any balance in excess of such amount to the Trustee. Unless otherwise ordered by the Court, tax refunds turned over to the Trustee shall be distributed by the Trustee for the benefit of creditors . Any motion to retain a tax refund in excess of the amount set forth above shall be filed and served pursuant to LBR 9013-3(b).

IT IS SO ORDERED.

Agreed BY:

/s/ DEBTOR

/s/ ESQ.

Margaret A. Burks, Esq.

/s/ Margaret A. Burks, Esq.

Copies to: Default List

9019 Motion to Compromise

"Good" Example of 9019 with Appropriate Case Law and Analysis

MOTION TO APPROVE COMPROMISE OF CLAIM UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019

Now comes [Movant], Trustee, and requests that this Court authorize the settlement of a preference payment that was made to American Express for a payment of $1,250.00. While the preference payment made to American Express was in the amount of $1,640.09, the Trustee believes that this settlement is fair and reasonable and in the best interest of all parties based upon the facts outlined in this motion.

Respectfully Submitted,

/s/ [Movant], Trustee

LEGAL BASIS FOR RELIEF REQUESTED

A. **The Fed. R. Bankr. P. 9019 Standard**

6. The settlement of controversies is governed by Fed. R. Bankr. P. 9019(a), which provides in pertinent part that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." "The decision to approve a given compromise lies within the sound discretion of the trial court. Such approval should only be given where the settlement is both fair and equitable." Whether a compromise should be accepted or rejected lies within the sound discretion of the Court. In re SIS Corp., 108 B.R. 608, 612 (Bankr. N.D. Ohio 1989). See also In re Planned Sys., Inc., 82 B.R. 919, 921 (Bankr. S.D. Ohio 1988); In re Carson, 82 B.R. 847, 852-53 (Bankr. S.D. Ohio 1987).

7. In reviewing a proposed settlement, the court "is not to decide the numerous questions of law and fact . . . but rather to canvas the issues in order to determine whether the settlement 'fall[s] below the lowest point of reasonableness."' In re Goldstein, 131 B.R. 367, 370 (Bankr. S.D. Ohio 1991) citing In re W.T. Grant & Co., 699 F.2d 599, 608 (2d Cir. 1983). A "mini trial" on the merits of underlying cause of action is not required and should not be undertaken by the Bankruptcy Court. Goldstein, 131 B.R. at 370 (citations omitted). Rather, the court need only consider those facts that are necessary to enable it to evaluate the settlement and to make an informed and independent judgment about the settlement. In re Energy Co-operative, Inc., 886 F.2d 921, 924-25 (7th Cir. 1989).

8. In determining whether a compromise is in the best interest of an estate, most bankruptcy courts consider the four factors enunciated by the Court of Appeals for the Eight Circuit in Drexel v. Loomis, 35 F.2d 800, 806 (8th Cir. 1929). In re Carson, 82 B.R. at 853. See also Will v. Northwestern Univ. (In re Nutraquest, Inc.), 434 F.3d 639, 644 (3rd Cir. 2006) (noting that the origin of the four factors can be traced back to Drexel).

9. Drexel provided four criteria for a court to consider when faced with a proposed settlement: (1) the probability of success in litigation of the controversy; (2) the likely difficulties in collection of any resulting judgment; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors. In re Carson, 82 B.R. at 853. See also In re Elva Marie Cook, 2006 Bankr. LEXIS 1, *7 (B.A.P.) (citations omitted); Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-25 (1968) (applying the same factors under pre-Code law); Drexel v. Loomis, 35 F.2d at 806; Depositor v. Mary M. Holloway Foundation, 36 F.3d 582, 587 (7th Cir. 1994); In re Bell & Beckwith, 93 B.R. 569, 574 (Bankr. N.D. Ohio 1989).

10. While the four enumerated factors are the most frequently citeUnited States Supreme Court stated that a bankruptcy court should consider "all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise." TMT Trailer Ferry, 390 U.S. at 424. To that end, courts have considered such other factors as whether the settlement was a product of arms' length bargaining, or whether the settlement promoted the public interest. See Connecticut General Life Ins. Co. v. United Cos. Fin. Corp (In re Foster Mortgage Corp.), 68 F.3d 914, 917 (5th Cir. 1995); Nellis v. Shugrue, 165 B.R. 115, 122 (S.D.N.Y.1994); In re Present Co., 141 B.R. 18, 21 (Bankr. W.D.N.Y. 1992).

B. The Fed. R. Bankr. P. 9019 Standard Applied To The Instant Case

11. The factors present in this case weigh heavily in favor of approval of Settlement.

12. Based on the foregoing, the Trustee respectfully submits that it is in best interests of the creditors and the bankruptcy estate to accept this offer in the amount of $1,250.00.

CONCLUSION

WHEREFORE, the Trustee requests entry of an Order granting the relief requested herein and such other and further relief as the Court may deem proper.

"Bad" Example of 9019 Motion

TRUSTEE'S APPLICATION TO SETTLE AND COMPROMISE CLAIM OF DEBTOR(S)

Now comes [Movant], the duly qualified and acting Trustee and represents to the Court that the Debtor filed a Chapter 7 bankruptcy petition on October 31, 2017 and states:

1. At the time of the filing of this bankruptcy the Debtor, Jonathan Clark, had a pending personal injury case, Karr & Sherman Co., L.P.A. is representing the debtor in the personal injury matter.

2. Trustee filed an Application to Employ Karr & Sherman Co., L.P.A. as Attorney with the Court on July 6, 2018 (Ct. Doc #21). An Order Appointing Gregory T. Shumaker as Attorney was entered by the Court on July 28, 2018 (Ct. Doc #22).

3. Karr & Sherman Co., L.P.A. has reached a settlement amount of $22,000.00. There will be distribution to unsecured creditors.

4. Karr & Sherman Co., L.P.A. and the Trustee believe that this offer in the total amount of $22,000.00 should be accepted. It is unlikely that any additional funds would be forthcoming. (See Exhibit A attached hereto and made a part hereof: letter from Attorney to Trustee dated December 7, 2018).

WHEREFORE, the Trustee seeks approval from this Court of this settlement and has by regular mail sent a copy of this Application to Settle and Compromise Claim to all creditors listed on the Mailing Matrix advising creditors that the Trustee seeks to compromise a settlement in a personal injury matter and allowing creditors 21 days from the date of the filing of this Application within which to object and further advises creditors that if they object they must do so in writing to the Bankruptcy Court, stating with specificity the basis of their objection as well as provide the Trustee with a copy of the objection, and that if no objection is offered, the Trustee will then submit an Order to the Court allowing the compromise of this equity.

Respectfully submitted,

/s/ [Trustee]

2019 UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE:	:	CASE NO.
DEBTOR	:	CHAPTER 13
	:	JUDGE HOPKINS
	:	MOTION TO PARTIALLY RETAIN BONUS NUNC PRO TUNC

Comes now the Debtor who respectfully states that she has received a bonus in the net amount of $5,234.76 on February 15, 2019.

MEMORANDUM

Debtor proposes to pay $3,134.76 to the Chapter 13 Trustee and retain $2,100.00 for her maintenance and support pursuant to 11 U.S.C. Section 1325. Debtor further reports that the payment of $3,134.76 was tendered to the Trustee on or around February 26, 2019.

Debtor proposes to use the bonus to pay the following expenses:

Tire/Rim repair due to hitting pothole - $1,106.42 - repair made approximately 2/15/2019 this was urgent expense - receipt attached.

Headlight repair and extraordinary vehicle maintenance - $1,101.86 - these repairs were necessary for safety of vehicle - receipt attached.

The Plan currently provides for payment of 5% to the unsecured creditors. The plan percentage will increase as a result of this additional funding into this above-median plan. Debtor will file a motion to modify plan contemporaneously herewith.

In accordance with 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 15,

2019 /s/ [Debtor]

Wherefore, Debtor respectfully request an Order allowing her to retain the 2019 bonus nunc pro tunc for the reasons stated herein.

Respectfully submitted,

/s/ [Attorney]