

**MEMORANDUM RE: CANTON TRANSITION
PROCEDURES FOR CHAPTER 7 CASES AND RELATED ADVERSARY
PROCEEDINGS ASSIGNED TO JUDGE MARY ANN WHIPPLE**

As previously announced, Canton cases will be handled by Judges Gustafson, Patton and Whipple starting on October 1, 2022, after Judge Kendig's retirement. There will be changes in procedure and scheduling to facilitate the transition.

Judge Whipple will handle Chapter 7 matters and related adversary proceedings. The purpose of this memorandum is to highlight changes in current Chapter 7 practices and procedures in Canton. They will be effective on October 1, 2022. As the transition progresses, Judge Whipple will continue to evaluate and revise procedures as necessary.

STAFFING

Anita Pribula will serve as the courtroom deputy for Canton matters assigned to Judge Whipple. Scheduling and other questions that would generally be directed to the courtroom deputy should continue to be directed to her at (330) 458-2478.

Judge Whipple's Judicial Assistant is Andrea Schultz and her law clerk is Cathy Garcia-Feehan. They will assist in handling Judge Whipple's Canton docket. They can be reached in Toledo at (419) 213-5621.

GENERAL SCHEDULING

In a material departure from existing practice, Judge Whipple does not permit self-scheduling of matters. Rather the Clerk's office, courtroom deputy and judge will schedule matters for hearing as necessary, either by notice or order as deemed appropriate. Counsel will not necessarily be contacted in advance about a scheduled hearing date. Any continuance of a scheduled hearing requires a motion indicating whether opposing counsel consents to the requested continuance. Contact the Canton Courtroom Deputy for the continued hearing date and time and then upload an appropriate order.

Judge Whipple relies on the definition of "after notice and an opportunity for hearing" in Bankruptcy Code § 102(2) in Chapter 7 scheduling. So she will generally not hold a hearing on a properly noticed motion, application or objection if there is no timely response/objection filed and served. Sometimes, even if there is no

timely objection, she will still schedule a hearing on a matter if she has questions or concerns. Even on default, she will evaluate whether a cognizable basis for the relief sought has been stated.

Because Judge Whipple does not permit self-scheduling, and the Clerk will serve notices of hearing or orders setting hearings as appropriate if a hearing becomes necessary, Judge Whipple expects compliance with Local Bankruptcy Rule 9013-1 on filings as the means of notifying other parties-in-interest of the response date to the request for relief, whether it is 14 days (usually) or some other period of time. The exception, as set forth in more detail below, is for motions for relief from stay, where Local Bankruptcy Rule 9013-1 language will not be required, because the Clerk will be sending an immediate Official Form B420A notice of motion. The notice will include a response deadline by date and the preliminary hearing date if a response is timely filed. Parties will otherwise no longer be expected to serve motion notices on Official Form B420A on other matters.

Hearing/Pretrial Conference Times: Judge Whipple will retain the practice of scheduling Chapter 7 matters requiring a hearing on designated Mondays.

Miscellaneous Chapter 7 matters will continue to be scheduled for hearing at 3:00 p.m. on designated Mondays.

Pretrial conferences in Adversary Proceedings related to Chapter 7 matters will be scheduled for designated Mondays, instead of on Wednesdays. Pretrial conferences will be scheduled in time slots starting at 2:00 p.m.

Preliminary hearings on stay relief motions (with further procedures set forth below) will be initially set for every Monday at 1:30 p.m. When there is a response to a motion and a preliminary hearing is necessary, Judge Whipple may later change the hearing date to avoid other conflicts with her schedule.

Reaffirmation agreements that require a hearing, or that Judge Whipple decides in her discretion to hear because of an un rebutted presumption of undue hardship, will be set on one designated Monday each month at the end of the 3:00 p.m. docket.

Trials or contested matters requiring an evidentiary hearing will be scheduled in consultation with counsel for available days that Judge Whipple can

fit in given her schedule and that do not conflict with Canton scheduling for Judges Gustafson and Patton.

HEARING PROCEDURES--VIRTUAL VERSUS IN PERSON

Judge Whipple initially intends to conduct all Canton non-evidentiary matters virtually, generally by telephone. Call-in information will be as follows: **Parties should call (866) 390-1828 and use Access Code 8812665 followed by the pound sign, which is #.**

Judge Whipple intends to conduct trials and evidentiary hearings in person in the Canton courtroom unless, upon consultation with the parties and in her judgment, a matter can effectively and more efficiently be handled via Microsoft Teams. Mask-wearing and other in-court health and safety protocols for in-court proceedings will be addressed in accordance with the then-existing COVID-19 status in Stark County.

Any trial or other contested matter or proceeding at which the court intends to hear witness testimony and take other evidence will be specified as an evidentiary proceeding in a scheduling order. In the absence of a trial or other specification that evidence will be taken, lawyers should assume proceedings will consist of status updates, oral argument and scheduling discussions. Questions about whether a proceeding will be evidentiary should be directed to the courtroom deputy.

Clients are welcome and encouraged to attend pretrial conferences and other court proceedings, virtual and otherwise. But client attendance is not required **by the court** unless the court informs counsel that their client must appear.

ADVERSARY PROCEEDINGS

These procedures will only apply to Adversary Proceedings assigned to Judge Whipple. Judges Gustafson and Patton may handle Adversary Proceedings assigned to them differently.

Judge Whipple requires compliance with Bankruptcy Rule 7007.1 by any party to an adversary proceeding that is a corporation as defined by Section 101(9) of the

Bankruptcy Code. Compliance with this rule will also be emphasized district-wide in the coming months.

Judge Whipple schedules in the summons and conducts an early pretrial conference in every adversary proceeding. Whether virtually or in person, Judge Whipple will conduct all pretrial conferences on the record, not just those where a party is unrepresented.

Judge Whipple will not be entering and directing service of Judge Kendig's form "Initial Pretrial and Case Management Order" in connection with service of the summons and complaint. Nor does she use or expect to use a similar order in connection with service of the summons and complaint.

Judge Whipple does not require formal compliance with Rules 26(f) and 26(a)(1) of the Federal Rules of Civil Procedure before the initial pretrial scheduling conference set in the summons. Among other reasons, defendants are often not represented by counsel early on, especially if a defendant is a Chapter 7 debtor and the plaintiff is a Chapter 7 trustee. Also, many routine adversary proceedings do not require this level of procedure and practice to be cost-effectively and efficiently addressed. The matters and actions specified by those rules will be discussed at the pretrial conference. Deadlines set at the initial and other pretrial conferences will become part of the Rule 16 scheduling order issued after the pretrial conference. Although the formal report and discovery plan need not be filed before the pretrial conference occurs, Judge Whipple generally expects consideration of and discussions about Rule 26 matters with clients and opposing counsel where there is an appearance of record.

The court values transparency of the docket and court record. The court expects that agreements for extensions of time to respond to pleadings or discovery be reflected on the court record. Counsel may either submit an agreed order or stipulation through the e-orders program or file an agreed motion for an enlargement of time. Making such agreements a matter of record reduces miscommunication and keeps the court apprised of case progress.

If a request to extend the response date to the complaint is filed or agreed to, the pretrial conference set in the summons will not automatically be vacated and rescheduled absent a separate motion for cause. Judge Whipple generally prefers to conduct the pretrial conference even in the absence of a response to the

complaint. If there is a reason not to go forward with the initial pretrial conference, then a party needs to file a separate request to continue it. An example of a good reason to continue a pretrial scheduling conference is that the parties are engaged in settlement discussion that present a reasonable probability of success.

Judge Whipple will follow a different procedure to secure compliance with the consent provisions of Bankruptcy Rule 7008 and 7012(b). Instead of a Clerk's office deficiency notice and follow up to obtain filing of amended pleadings where initial compliance has not occurred, Judge Whipple will address this subject at the initial pretrial conference. Generally the Rule 16 scheduling order will direct as necessary the filing of a supplemental pleading to address consent, only. Judge Whipple prefers supplemental pleadings to amended pleadings to address consent issues.

Judge Whipple's view is that a default judgment cannot be entered against a party without the preliminary step of entry of a Clerk's entry of default under Rule 55(a). The Local Rules do not specify a procedure for Clerk's entries of default. Judge Whipple does not require (but does not discourage or prohibit) a separate request or application for a Clerk's entry of default to be filed, as the status of an apparent default will be addressed at the pretrial conference. If service appears proper the court will generally direct entry of a default by the Clerk in the Rule 16 scheduling order, while also setting a deadline for filing a motion for default judgment. Often, however, a request for issuance of an alias summons will need to be filed to remedy a service defect. Judge Whipple will also set motions for entry of a default judgment for hearing instead of immediately granting the motion without a hearing.

If not addressed in the complaint, the court expects compliance with the Servicemembers Civil Relief Act in connection with any motion for default judgment filed in an adversary proceeding with an individual defendant.

STAY RELIEF MOTIONS IN CHAPTER 7 CASES

Judge Whipple will not require Official Form B420A notices or Local Bankruptcy Rule 9013-1 language in connection with motions for relief from stay. Instead, the Clerk will send an immediate notice of motion conforming to Official Form B420A. The notice will include a response deadline by date and the

preliminary hearing date if a response is timely filed. Motions for relief from stay are generally the only motions upon which a hearing date will routinely be set before the response deadline has passed.

As the Official Form B420A notice will indicate, Judge Whipple will not hold a preliminary hearing on a motion for relief from stay unless a response is timely filed. Judge Whipple will not enter stay relief orders on default until on or after the day set for the preliminary hearing even if there is no response to the motion. The reason for holding off on order entry is that debtors sometimes show up for a preliminary hearing even if they are represented.

Continuances of a preliminary hearing at a debtor or trustee's request generally require the consent of movant's counsel, which should be stated in the motion for a continuance. Contact the Canton Courtroom Deputy for the continued hearing date and time and then upload an appropriate order.

Judge Whipple will not sign an order containing waiver of the 14 day stay period of Bankruptcy Rule 4001(a)(3) unless she finds that satisfactory cause for doing so is set forth in the motion. If she does not find cause, the waiver language will be stricken from the proposed order without further notice or a hearing.

ORDER SUBMISSION

As previously communicated to registered CM/ECF users in this district on September 15, 2022, the transition judges require submission of a proposed form of order through the CM/ECF e-orders program at the time of filing of any request for relief. Unless required by rule, you may but are not required to also attach a copy of the proposed order to your filed document as an exhibit. Even if you do so, you must also submit separately a proposed form order through the e-orders program at the time of filing a motion or other request for relief. All orders require a 4-inch margin at the top for electronic processing. The court does not expect a proposed form of judgment to be submitted at the time of filing of a complaint.

MISCELLANEOUS MATTERS

IFP Applications. As with all other requests for relief, a proposed form of order waiving the filing fee must be submitted through the court's CM/ECF order submission system at filing. Judge Whipple will generally set fee waiver requests for hearing if it appears that a debtor's income exceeds the 150% income poverty

ceiling for a household of the specified size set in 28 U.S.C. § 1930(f). Another circumstance that may lead Judge Whipple to set a hearing on an IFP application is if an attorney's fee information is inconsistent as between the Rule 2017 compensation statement, the statement of financial affairs and the application. She will exercise her discretion to decide whether to permit waiver of the filing fee if any attorney's fee is paid, and is unlikely to do so if the disclosed attorney's fee reflects counsel's full routine fee for representation of a debtor in a Chapter 7 case.

Power of Attorney Forms. If a case record or a filing shows the use of a power of attorney form, Judge Whipple will expect the form to be separately filed on the record. Sometimes she will set a hearing on the power of attorney.

Attorney's Fees. Judge Kendig's memorandum on a presumptive Chapter 7 case fee amount will be revoked. Where Judge Whipple has concerns about attorney's fee amounts, she will set them for hearing and review under 11 U.S.C. § 329.

Applications to Employ. Judge Whipple expects all applications to employ attorneys and other professionals to be noticed out as required by Local Bankruptcy Rule 9013-1. That includes an application filed by a trustee to employ herself or himself as attorney for the trustee. As with other matters, a proposed order needs to be uploaded with any application to employ a professional at filing.

Corporations as Debtors. Judge Whipple requires compliance with Bankruptcy Rule 1007(a) by a debtor that is a corporation as defined by Section 101(9) of the Bankruptcy Code. Compliance with this rule will also be emphasized district-wide in coming months.

Mary Ann Whipple
Chief Judge
United States Bankruptcy Court
Northern District of Ohio, Western Division

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September 30, 2022