

## **RULE 9013-1 - MOTIONS PRACTICE**

- (a) Written Motion Required. A request for an order shall be made by motion. Unless it is made during the course of a hearing or trial, the motion must be in writing and must be filed with the Clerk. The movant may file along with the motion a separate, supporting memorandum, including argument and citations to authorities.
- (b) Consultation Required. Before filing any motion, the movant shall make a good faith effort to determine whether or not the motion is unopposed. If it is unopposed, the motion shall contain representation that it has been agreed to by the opposing party or parties. Otherwise, the motion shall state that, after consultation, consent could not be obtained or shall state reasons why consultation was not undertaken.
- (c) Proposed Order. Every motion must be accompanied by a proposed form of order. If the motion is consented to, the proposed order shall state that it is issued with the consent of the parties. Otherwise, the proposed order shall indicate that it is issued after notice and hearing or an opportunity for a hearing.
- (d) Scheduling Hearings.
- (1) *Requirement that Hearing Date be Obtained.* Except as set forth below or otherwise ordered by the Court, a movant shall obtain a hearing date prior to filing a motion. A hearing date does not need to be set prior to filing the motions listed below, provided that the movant is not aware of any objection to the motion, that the motion states prominently in the upper right corner of the first page “Relief Requested Without a Hearing,” and, with the exception of consent motions for relief from stay seeking immediate relief pursuant to Fed. R. Bankr. P. 4001(a)(3), that the proposed order states: “This Order shall become final in

fourteen (14) days unless a party in interest sooner objects, in which case the matter shall be set for hearing and considered by the Court as if this Order had not been entered.”.

applications to employ professional persons that do not seek post facto or nunc pro tunc approval;

motions to extend time to file schedules, statements, tax returns, earnings statements and other documents required by 11 U.S.C. § 521 or Fed. R. Bankr. P. 1007 that have the consent of the U.S. Trustee or any trustee appointed in the case and any committee appointed in the case;

motions for relief from stay that have the consent of the debtor and any trustee and committee appointed in the case, as well as any codebtor with respect to which relief from a codebtor stay is sought;

motions for enlargement of time pursuant to either Fed. R. Bankr. P. 4008(a) and D. Me. LBR 4008-1(a), or Fed. R. Bankr. P. 9006(b)(1);

motions to dismiss filed pursuant to 11 U.S.C. § 1208(b) or § 1307(b);

applications to defer filing fees;

motions to require tax filings;

motions to establish a commission in Chapter 12 cases;

motions to deduct and pay over to employers;

motions to be excepted from electronic filing requirements;

motions to reopen a case filed within a year of the date that the case was closed;

motions to conduct an examination pursuant to Fed. R. Bankr. P. 2004;

motions to limit notice; and

motion for redaction of personal identifiers (Maine Bankruptcy Form 3).

[Amended Effective July 22, 2020]

- (2) *Procedure for Obtaining a Hearing Date.* Except as set forth below, the movant may either self-calendar a hearing date using the hearing dates found on the

Court's web site or may schedule a hearing by calling the Clerk's office. The movant shall obtain an appropriate hearing date from the Clerk for emergency or expedited motions that require a hearing on a date other than a regularly scheduled hearing date. The Clerk may designate a deputy in Bangor and a deputy in Portland who shall be principally in charge of scheduling and whom shall be contacted by the moving party to arrange a hearing date and time.

- (3) *Movant's Responsibilities Regarding Scheduling - Sanctions.* It is the responsibility of the moving party to obtain a hearing date that provides adequate time for filing, notice and response under the pertinent provisions of these rules. Should selection of the hearing date or a delay in filing the motion result in inadequate notice or time for response under these rules, the Court may refuse to hear the motion, continue the hearing or impose other, appropriate sanctions.
- (4) *Notification of Need for Extended Hearing Time Required.* If it is anticipated that the matter will take fifteen (15) minutes or more hearing time, the party arranging the hearing must inform the Clerk as to how much hearing time will be needed.
- (5) *Notice and Timing.* The movant shall be responsible for providing notice of the time and date set for the hearing to all necessary parties-in-interest. Absent a request for expedited hearing, the hearing date for a motion shall be no less than twenty-one (21) days, and the response date no less than fourteen (14) days, from the date the motion is filed. In cases where the Fed. R. Bankr. P. provide for an event, fixed time or hearing-notice period of twenty-one (21) days or more, then the hearing date shall be no less than twenty-eight (28) days, and the response date no less than twenty-one (21) days, from the date the motion is filed. These

notice and timing provisions shall govern all motions or objections unless otherwise specifically provided for in these rules. Notwithstanding the foregoing, and absent a request for a shortened response date, in no instance under these rules shall a response date be set later than seven (7) calendar days prior to a hearing date.

(e) Response Required. Any party opposing entry of the order requested by motion shall file a response to the motion no later than the response date set in the hearing notice. Special rules regarding the necessity and time for filing responses to expedited and emergency motions are set forth below in subsections (i), (j) and (k) of this rule. Every response to a motion shall admit or deny each allegation of the motion and, in addition, shall assert affirmatively, by narrative or otherwise, such defenses or other matters as may be required fully to inform the Court of the scope of issues raised by the motion.

(f) Content of Response~~Replies Permitted.~~ ~~Every response to a motion shall admit or deny each allegation of the motion and, in addition, shall assert affirmatively, by narrative or otherwise, such defenses or other matters as may be required fully to inform the Court of the scope of issues raised by the motion.~~ Replies by the movant are not required but, unless otherwise prohibited by the Court, are permitted if the movant has information that is (i) not repetitive of materials contained in the motion or opening brief, and (ii) responsive to material raised in the opposition to the motion or opening brief. Unless otherwise permitted by the Court, replies are limited to 5 pages in length and shall be filed no later than 4:00 p.m. prevailing Eastern Time of the day prior to the hearing.

(g) Action Without Hearing. The Court may act upon a motion under appropriate circumstances including the following:

(1) *Absence of Objection.* If no objection is filed to the motion before the passing of the objection date set in the notice of hearing, the Court may act on the motion with or without a hearing.

(2) *Other Circumstances.* The Court may act on a motion prior to the expiration of the objection period without a hearing in appropriate circumstances, including but not limited to:

(i) Non-adversarial motions of routine nature;

(ii) Motions to which parties-in-interest have consented;

(iii) Motions that are frivolous in light of the law and the established facts of the case; and

(iv) Motions that are opposed only by objections which are, considering the law and the established facts of the case, frivolous.

(h) Removal from the Hearing List. The Court may, in its discretion, remove from the hearing list routine matters as to which no timely written response or objection has been filed. See D. Me. LBR 9014-1(a)(5)(describing “routine” matters). If the party initiating the matter expressly requests that it be heard, for example, to make a statement on the record, it will not be removed from the list under the provisions of this rule. The Court may consider and act upon such matters as have been removed from the list under this rule without hearing and may enter the proposed order submitted with the motion, request from the movant a modified order indicating the lack of timely opposition and that no hearing was held, or may enter an appropriate order of its own.

(i) Expedited Hearings. If a movant seeks to have a motion considered by the Court earlier than twenty-one (21) days after the motion is filed, it shall file a separate motion denominated "Motion for Expedited Hearing."

(1) *Motion for Expedited Hearing - Contents*. The motion for expedited hearing shall set forth in detail all facts and circumstances which justify expedited hearing and may include, or be accompanied by documents, affidavits or a memorandum which includes citations to pertinent authority.

(2) *Limitation of Notice*. If the facts and circumstances leading to the request for expedited hearing or the nature of the relief requested warrant limitation of notice, the motion for expedited hearing shall include a request that notice be limited to designated recipients and shall, in addition, recommend a practical manner of notice reasonably calculated to inform affected parties that the motion pends and that a hearing will take place on an expedited basis. It is the duty of the party seeking expedited hearing and limitation of notice to make a good faith effort to advise all affected parties of the pending motion and of the time and date of the hearing. Such good faith efforts may include providing notice of the substance of the motion and of the date and time of hearings by telephone or by facsimile transmission. Although notice to necessary parties-in-interest may be effected by facsimile transmission in appropriate circumstances, this rule does not approve or authorize filing with the Clerk of any pleading, paper or certificate by such means. See D. Me. LBR 9047-1.

(3) *Responses to Expedited Motions*. Written responses to expedited motions are required. The content of responses to expedited motions shall, to the extent

possible under the existing circumstances, include the information required for responses to routine motions. Responses to expedited motions shall be filed no later than the business day preceding the day of hearing.

- (4) *Hearings on Expedited Motions.* The Court shall set such conditions for hearing, and shall schedule and conduct the hearing, telephonically or otherwise, as is appropriate in the circumstances.

(j) Emergency Motions. If a movant seeks to have a motion considered by the Court earlier than forty-eight (48) hours after the motion is filed, it shall file a separate motion denominated "Motion for Emergency Hearing."

- (1) *Motion for Emergency Hearing - Contents.* The motion for emergency hearing shall set forth in detail all facts and circumstances which necessitate an emergency hearing and may be accompanied by documents, affidavits or a memorandum which includes citations to pertinent authority.
- (2) *Limitation of Notice.* If the necessity of an emergency hearing precludes the movant's ability to provide notice in the manner and to the parties otherwise required by these rules or the Federal Rules of Bankruptcy Procedure, the motion for emergency hearing shall include a request that notice be limited to designated recipients and shall, in addition, recommend a practical manner of notice reasonably calculated to inform affected parties that the motion pends and that an emergency hearing will take place. It is the duty of the party seeking an emergency hearing to make a good faith effort to advise all affected parties of the motion and of the time and date for hearing. Such good faith efforts may include providing notice of the substance of the motion and of the date and time of

hearings by telephone or by facsimile transmission. Such efforts may, and in appropriate circumstances should, include attempts to provide notice of the motion and hearing in advance of filing the motion or prior to entry of an order limiting notice. Nothing in this rule authorizes filing with the Clerk of any pleading, paper or certificate by facsimile transmission. See D. Me. LBR 9047-1.

(3) *Responses to Emergency Motions.* Notwithstanding any other provisions of these rules, written responses to emergency motions are not required. However, written responses are encouraged and may be filed up to the time that the hearing is convened.

(4) *Hearings on Emergency Motions.* The Court shall set such conditions for the emergency hearing, and shall schedule and conduct the hearing, telephonically or otherwise, as appropriate in the circumstances.

(5) *Procedures and Requirements Flexible.* The Court may waive, relax or amend requirements relating to emergency motions when necessary in order to meet existing exigencies.

(k) Ex Parte Motions. A motion seeking ex parte relief may be filed only in circumstances in which immediate action is required to maintain the status quo until an appropriate hearing on notice can be conducted. A motion for ex parte relief shall be verified or supported by affidavit and shall set forth specific facts and circumstances necessitating ex parte relief. The motion shall include a statement as to why proceeding under this rule's procedures for expedited or emergency hearing is not practical. All orders or proposed orders providing ex parte relief shall include the finding that the relief requested could not be delayed and that affected parties may request a hearing on the subject matter addressed by the ex parte motion by filing a motion for review of

the ex parte action within fourteen (14) days of service of the order for ex parte relief. The Court shall schedule a hearing on such a post-order motion, if appropriate, as soon as practicable.

[Amended effective August 24, 2021]