

D.N.J. LBR 9013-1 MOTION PRACTICE

- (a) *General Provisions.* An application to the Court for an order requiring notice and opportunity for hearing shall be by motion. Every motion shall state the time and place returnable, the grounds upon which it is made, and the nature of the relief sought. A motion shall be deemed uncontested unless responsive papers are timely filed in accordance with subdivision (d). A proposed form of order shall accompany the moving papers, except as provided in [D.N.J. LBR 9072-1\(b\)](#).
- (b) *Scheduling.* An application by motion except in a chapter 13 case shall be made returnable on a regular motion day before the judge to whom the case has been assigned. The regular motion day shall be Monday for all three vicinages. A motion in a chapter 13 case shall be made returnable on a date assigned by the Court. A motion not timely filed pursuant to subdivision (c) will be scheduled for the next motion day.
- (c) *Time and Place of Filing.* All moving papers shall be filed in the vicinage of the case. Such papers shall be filed and served at least 21 days before the return date, except as provided in Fed. R. Bankr. P. 3007.
- (d) *Responsive Papers; Cross Motions.*
- (1) All answering papers and cross-motions shall be filed and served at least 7 days before the return date. All cross motions shall be deemed contested. No motion shall be designated as a cross motion unless it is related to the original motion.
 - (2) All reply papers, as well as answering papers to a cross- motion, shall be filed and served at least 4 days before the return date. Upon the request of a party, the Court may enlarge the time for the filing of answering and reply papers.
- (e) *Orders Shortening Time.* An application under Fed. R. Bankr. P. 9006(c) for an order shortening time for hearing on a motion shall be submitted with the moving papers in a form substantially the same as Local Forms, [Application for Order Shortening Time](#) and [Order Shortening Time Period For Notice and Setting Hearing](#). Use of orders to show cause shall be limited to adversary proceedings in accordance with [D.N.J. LBR 9075-1](#).
- (f) *Oral Argument.* Unless a party requests oral argument or the Court otherwise directs, all motions shall be decided on the papers. All parties must state their intentions regarding oral argument in the moving or answering papers.
- (g) *Telephone Conference.* The Court, on its own motion or on a party's request, may direct argument of any motion by telephone conference without Court appearance. A verbatim record shall be made of all such telephone arguments.
- (h) *Motion for Reconsideration.* A motion for reconsideration shall be filed within 14 days of the entry of the Court's order or judgment on the original motion. The motion shall be filed with a memorandum setting forth concisely the matters or controlling decisions which the movant believes constitute cause for reconsideration. A timely motion for reconsideration shall be deemed to be a motion under Fed. R. Bankr. P. 8002(b).

- (i) *Testimony.* Unless the Court authorizes or directs otherwise prior to the return date, no testimony shall be taken on a motion except by certification or affidavit under Fed. R. Civ. P. 43(e) and Fed. R. Bankr. P. 9017. Notwithstanding the foregoing, live testimony may be taken on a motion under Code § 363(c) or § 364 without prior authorization from the Court.
- (j) *Consent Order in Lieu of Motion.*
 - (1) Requests to the Court for an order on which all parties who are entitled to notice have affixed their written consent may be presented by application without motion or hearing. The application shall explain the grounds for entry of the order.
 - (2) Notwithstanding subsection (j) (1) of this rule, a consent order in lieu of a motion under Code § 363(e) in a chapter 11 case can be filed without the written consent of the 20 largest unsecured creditors if no committee of unsecured creditors has been appointed. In such event, the 20 largest unsecured creditors shall be served with the application and consent order and shall have 7 days to serve an objection. The proponent of the consent order must simultaneously submit a separate certification of service to the Court indicating service on the 20 largest unsecured creditors. If a committee of unsecured creditors has been appointed, its written consent must be affixed to a consent order in lieu of a motion under Code § 363(e).
- (k) *Duty to Confer.* If a motion is contested, the movant shall confer with the respondent prior to the hearing to determine whether a consent order may be entered disposing of the motion, or, in the alternative, to stipulate the resolution of as many issues as possible.
- (l) *Duty to Report Settlement or Withdrawal.* If a motion is settled or withdrawn, the movant shall inform the Court immediately by telephone, and send written confirmation promptly thereafter.
- (m) Any motion seeking relief from the automatic stay, the use, sale or lease of property or the assumption, rejection or assignment of executory contracts and unexpired leases shall specifically state in the caption of the motion whether the movant seeks a waiver of the 14 day stay of the effectiveness of any proposed order for the relief sought under Federal Rules of Bankruptcy Procedure 4001(a)(3), 6004(h) or 6006(d). The movant shall bear the burden of establishing cause for the waiver of the 14 day stay provisions and shall detail the cause in its moving papers.

1997 Comment: Formerly Local Rule 3(a) through (h), and (j) through (m).

1999 Comment: Subsection (h) of this rule was amended. The amendment substituted the word "entry" for the word "filing" in the first sentence to be consistent with the federal rules of civil and bankruptcy procedure.

2004 Comment: Subsection (j)(2) is amended to require that the proponent of the consent order in lieu of motion under Code § 363(e) in a Chapter 11 case, simultaneously submit a separate certification of service to the Court indicating service on the 20 largest unsecured creditors, where the consent order in lieu of motion is filed, without the written consent of the 20 largest unsecured creditors if no committee of unsecured creditors has been appointed, and the 20 largest unsecured creditors have been served with the application and consent order providing 5 days to file and serve an objection.

2008 Comment: Subsection (d) of this rule is amended to require that the proponent of a reply or answer to a cross-motion file and serve such papers at least 4 days before the return date of the original motion.

- 2009 Comment: Subsection (d) of this rule is amended to clarify the time required for filing and service of a reply or answer to a cross-motion. Subsection(m) is amended to conform with Fed. R. Bankr.P. 6004(h) stating an order authorizing the use, sale or lease of property other than cash collateral for ten days unless the court orders otherwise.
- Dec., 2009 Comment This Rule is amended to conform with the March 26, 2009, Supreme Court approval of changes to Bankruptcy Rule 9006 which addresses the method by which time is calculated. On May 7, 2009, the Statutory Time Period Technical Amendments Act of 2009 was enacted (Pub. L. No. 111-06). The law adjusts the time period in 28 statutes, including nine sections of the Bankruptcy Code, which are impacted by the federal rule changes. Both the statutory and rules changes take effect on the same day, December 1, 2009. Deadlines of less than 30 days have been changed to multiples of seven days so that the expiration of the deadline ordinarily would occur on a weekday. Under the revised rules: 5 day deadlines become 7 days; 10 and 15 day deadlines become 14 days; 20 day deadlines become 21 days; and 25 day deadlines become 28 days. Effective, December 1, 2009 conforming amendments to the Court's Local Rules, including the one set forth herein, have been approved by the Board of Bankruptcy Judges. Additional information concerning time computation amendments to the national rules, local rules, general orders and forms may be accessed at www.uscourts.gov/rules and www.njb.uscourts.gov.
- 2010 Comment: This rule is amended to eliminate the reference to "D.N.J. Local Forms 1 and 2," by substituting the captions of the Local Forms.
- Reference: Fed. R. Bankr. P. 5005 Filing and Transmittal of Papers; Fed. R. Bankr. P. 9006 Time; Fed. R. Bankr. P. 9014 Contested Matters; Fed. R. Bankr. P. 9001(7) and 9021.