

TIPS TO MEMBERS OF THE SANTA ANA BANKRUPTCY BAR FOR MORE EXPEDITIOUS CASE ADMINISTRATION

In conjunction with the Orange County Bankruptcy Forum, Judges Erithe Smith, Theodor Albert and Robert Kwan have offered the following tips for more expeditious Court administration.

In so doing, the Judges request that practitioners consider the volume of matters the Court are dealing with and consider whether just because one can do something doesn't mean they *should* do it, and proceed in a way that is most efficient consistent with their client's needs.

1. TIMELY SERVE JUDGE'S COPIES OF FILED DOCUMENTS

The Local Rules require the parties to serve the Judge with paper copies of most pleadings filed with the court (known as "judge's copies" or "courtesy copies"): (1) if filed at least 14 days before hearing, mail to the court and (2) if filed less than 14 days before hearing, deliver to the judge's (courtesy) copy box on the 5th floor. This is particularly important for documents filed within 72 hours of hearing. The Judges rely on the judge's copies of the pleadings to prepare for hearing. If a judge's copy is received the night before, or worse, the morning of the hearing, the judge is then obliged to race through the reading of the document just before taking the bench. This is bothersome and counterproductive because there is less time for the Judge to consider your position and arguments and puts you in a bad light. You want the judge to read your papers with attention and care, so help us help you to do that by promptly delivering the judge's copies. Many local practitioners violate the Local Rules by not serving judge's copies, which does not help their cause. The Judges are not going to look up in the electronic docket to see if you have filed a reply, nor are they going to have their clerks stand in front of a photocopier to copy your pleading and insert exhibit tabs, etc. We simply do not have the resources to do this. Also, please put exhibit tabs on judge's copies, which is required by the Local Rules and makes it easier for the Judge to read your pleadings.

Please remember to attach a copy of the Notice of Electronic Filing (NEF) to the judge's copy of an electronically filed document. We received many copies of documents that have been electronically filed without a NEF attached. This leads to unnecessary reprocessing work for the clerk's office because the staff cannot always determine if these documents are originals or copies, which means these documents already electronically filed are manually file-stamped, imaged and entered on the docket again, also cluttering the docket with duplicate entries as well. Also, please remember to stamp or mark the Judge's Copy as "Judge's Copy" to help distinguish copies from originals to help us in processing.

2. SUBMIT CORRECT ORDERS

Submitted orders are often delayed because they are incorrect and need to be fixed. Counsel should proofread and/or review the order before it is submitted. It appears that many orders are submitted by a paralegal or legal assistant without final review by counsel. Common problems include cut and paste errors (i.e., wrong caption (e.g., LA rather than SA), wrong case name or number, wrong hearing date, wrong judge), missing or incorrect proof of service or notice of entered order, missing or incorrect service list, wrong form order, lack of ### for judge's electronic signature on LOU orders instead of judge's signature block for paper orders, /s/ signatures for non-filing counsel (only counsel who files an order may use /s/ - other counsel signatures must be imaged), no text on judge's signature page (orders with no text or only "It is

so ordered” on the judge’s signature page will not be approved), insufficient room for judge’s signature on judge’s signature page (put ### on line 22 and no text below) Microsoft Word formatting errors (e.g., unnecessary or incorrect headers and footers), resubmitting rejected orders without fixing the errors. Submitted orders are often further delayed because when court staff calls counsel to fix an order or to return a call about fixing an order, many counsel do not promptly return the call or fix the order. If the court staff calls about fixing an order, help us to help you by promptly calling back and/or fixing the order; otherwise, staff will be working on someone else’s orders.

3. ELIMINATE “PROPOSED FROM LODGED ORDERS

Don't use the word "[proposed]" when lodging proposed orders. We already know it's proposed because, well, you drafted it and we didn't. This may seem like a little thing but having to go in and remove "[proposed]" takes time

4. USE JUDGMENT AND RESTRAINT IN CALLING THE COURT ABOUT STATUS OF ORDERS

Calls to Judge’s chambers about the status of routine, non-urgent orders are discouraged. Court staff is working as hard as they can in processing orders, which has been difficult lately, given the high volume of orders from the record number of cases being filed in this district this year. However, if there is an urgent and legitimate need for the prompt processing of an order, a call should be made to the calendar clerk for the judge on the case, and a message should be left on the calendar clerk’s voicemail (leaving case name and number, counsel’s name and callback number and the reasons for priority processing). The matter will be looked into, and follow-up and a return call will be made as appropriate. However, counsel should use judgment and restraint in making such a request (think of the story of the little boy who cried wolf). If you have to make a call about the status of a routine, non-urgent order, we ask that you give us about two weeks after submission before making that call to the calendar clerk and leaving a message on the voicemail requesting status of the order. The matter will be looked into, and follow-up and a return call will be made as appropriate. Repeated messages inquiring about the status of routine, non-urgent orders (i.e., multiple messages a day about the same order) are counterproductive. Unless you are authorized and directed otherwise, calls to chambers about the status of orders are not to be made.

5. REDUCE EX PARTE AND SHORTENED TIME PROCEEDINGS TO MATTERS TRULY REQUIRING SUCH RELIEF

We are seeing way too many *ex parte*, "emergency" motions and requests for shortened time. These take extra time to review out of order and can be quite disruptive. It is disappointing when the so-called "emergency" turns out to be nothing more than "my client is losing money." That is almost always the case and does not qualify as an "emergency" within any reasonable definition. Unless something is done the new "regular notice" will become shortened time.

We routinely deny these except for extreme cases, but it still takes unbudgeted time away every day. Years ago, we used to routinely grant shortened time for residential unlawful detainer relief from stay motions. However, given the extraordinary demand for court time, we no longer have the luxury of providing this service. Truly exigent circumstances must be presented for the granting of an OST.

6. TIMELY FILE OPPOSITIONS

File timely oppositions to all motions. The Judges and their staff spend an inordinate amount of time preparing for large calendars reading and analyzing every pleading for every calendared matter. It is disruptive to receive an opposition shortly before (on or the day of) the hearing after the Judge has already reviewed the motion and prepared a tentative ruling for what s/he believes is an uncontested motion. Some lawyers routinely do this and expect to be rewarded with time to argue and/or a continuance. Aside from the inconvenience to the court, this practice is also disrespectful to the moving party and its counsel.

7. SUBMIT TIMELY FILED JOINT STATUS REPORTS

Observe the Local Rules requiring timely status reports on adversary proceedings. The Court does not enjoy imposing sanctions and what is really needed instead is some help preparing for calendars. Something filed the day before, or even at the hearing itself, is disruptive and counter productive. Same thing on discovery disputes. Be sure that you have observed the meet and confer procedures of LBR 7026-1 and that you have done all that can reasonably be done before taking these disputes to the court. We really do not have time for ridiculous squabbles these days.

8.

REPORT SETTLED OR RESOLVED MATTERS AT EARLIEST TIME POSSIBLE

If a matter is settled or is being resolved by stipulation please call the law clerk as soon as you know. Chances are good we are reading and working up the matter, and would appreciate the chance to put it down in favor of something else actually needing our attention.

9. CHECK THE BOX ON REAFFIRMATION AGREEMENTS AND PROVIDE SUFFICIENT EVIDENCE TO SUPPORT FINDINGS FOR APPROVAL OF REAFFIRMATION AGREEMENTS

Please check one of the two boxes on the front of the standard Reaffirmation Agreement form. If not, a CIAN is generated and the court then has to read through the agreement to determine whether a presumption of undue hardship arises which is time consuming. It is also unnecessary and counter-productive since attorneys are already supposed to be pre-screening these.

Of course, part D should be filled out as well. Often these are submitted in blank or with just a signature with no explanation. This provokes an often unnecessary hearing. A stunning number of reaffirmation agreements are filed by represented debtors with Part D signed but completely blank. Part D includes important information (e.g., current monthly income and expenses; explanation for shortfall, etc.) from which the judge determines the presence or absence of undue hardship. The information in Part D often determines whether a hearing is required or not. In Judge Smith's Court, failure to complete Part D guarantees the matter will be set for hearing. If this situation does not improve, Judge Smith may start issuing OSCs re sanctions against offending lawyers.

If Schedules I and J do not show that debtor(s) can afford to make the payments, they need to submit a declaration showing the circumstances have changed that they can now afford to make

the payments so the court can find that reaffirming the debt will not be an undue hardship on them. The agreement does not contain sufficient information for the court to make such a finding, the court will set the matter for hearing and will require appearances by debtor(s) and counsel.

10. USE RIGHT EVENT CODE FOR ELECTRONICALLY FILED DOCUMENTS

When electronically filing documents, please make sure to use the correct event code. The court has been on ECF for over five years now, and we are still seeing too many ECF documents filed incorrectly, which take up staff time to correct.

11. DOUBLE-CHECK JUDGE'S SELF-CALENDARING DATES BEFORE FILING

Please check the Judge's self-calendaring dates frequently for changes before filing documents for hearing dates. It takes extra clerk's staff time to email or notify attorneys asking them to file amended notices of hearing with corrected hearing dates, and not to mention, the inconvenience to you of having an incorrect hearing date and serving amended notices of hearing.

12. GENERAL REMARKS

Overall, show some understanding and patience in that we are trying to do an impossibly large job with inadequate resources just now. Due to the current heavy demand for court time, judges have less time to spend in their offices reviewing and signing orders. That said, we try our best to make the time to do so as promptly as we can.