

## **Rule 9013-1: Motion Practice**

For purposes of these Local Rules, a request for an order, including a motion, application or other pleading (all of the foregoing will be referred to in this Local Rule as a "motion") shall be governed by the following requirements.

**(a) Motions.** All motions, unless made in open court, shall include a memorandum setting forth the points and authorities relied upon in support of the motion.

**(b) Length of Motions and Memoranda.** Unless otherwise permitted by the court, a motion and the supporting memorandum, a response and the supporting memorandum, and any reply and the supporting memorandum shall not exceed 15 pages, exclusive of attachments.

**(c) Response and Reply Times for Motions.** Unless otherwise set forth in the Rules, the Local Rules, the notice prescribed in paragraph (j) or an order of the court, the party responding to a motion shall have 14 days after service within which to serve and file a responsive memorandum, and the moving party shall have 14 days after service of the responsive memorandum to serve and file a reply.

**(d) Unopposed or *Ex Parte* Motions.** Motions that the moving party contends are unopposed or need not be set for hearing shall so state and be accompanied by a separate proposed order granting the relief requested. If the moving party contends that the motion should be granted on an ex parte basis, the motion shall state why it may be granted without notice and shall be accompanied by a form of order.

Unless otherwise ordered by the court, the following motions may be filed as ex parte motions. This list is not intended to be exclusive, and other motions may be filed on an ex parte basis, provided the court has authorized the moving party to do so.

(1) Motions for 2004 examinations

(2) Applications to approve estate professionals

(3) Motions to exceed the page limit (disfavored and should include explanation)

(4) Motions to set bar date for filing of claims

(5) Motion to pay filing fee in installments

(6) Motion to continue hearing, with statement of whether opposing counsel consented, and if not, the reason consent was not obtained

(7) Motion to delay discharge

(8) Motion to appear pro hac vice

(9) Motion to reopen a chapter 11 case

(10) Trustee's motion to defer filing fee

(11) Motion to withdraw as counsel

**(e) Discovery Disputes.** ~~No motion concerning~~

(1) Request for Informal Conference. After personal consultation and making a sincere effort to resolve a discovery dispute, if the dispute cannot be fully resolved without court intervention, the parties involved in the dispute shall promptly call chambers prior to filing a discovery related motion. Contact information for chambers is set forth on the Judge's Procedures page of the Arizona Bankruptcy Court website located at [www.azb.uscourts.gov](http://www.azb.uscourts.gov) ~~disputes~~. "Personal consultation" means a face to face meeting or phone discussion, in addition to emails, voice-mails, and texts.

(2) Good Faith Certification. No discovery-related motion will be considered by the court unless a statement of the moving party or its counsel, if represented, is attached certifying that after personal consultation and sincere ~~effort~~ effort to do so, the parties have been unable to resolve the matter and either the request for the informal conference has been denied or the discovery dispute has not been resolved as a consequence of the conference. "Personal consultation" means a face to face meeting or phone discussion, in addition to emails, voice-mails, and texts.

**(f) Motions to Compel.** When a motion for an order compelling discovery is brought, in addition to the requirements set forth in paragraph (e) above, the moving party shall set forth the following in separate, distinct, numbered paragraphs:

- (1) The questions propounded, the interrogatory submitted, the designation requested or the inspection requested;
- (2) The answer, designation or response received; and
- (3) The reason(s) why said answer, designation or response is deficient.

The foregoing requirements shall not apply where there has been a complete failure to respond to a discovery request.

**(g) Motions for Summary Judgment.** Any motion for summary judgment shall set forth separately from the memorandum of law, and in full, the specific facts upon which the moving party relies in support of the motion. The specific facts shall be set forth in serial fashion, not in narrative form. As to each fact, the statement shall refer to a specific portion of the record where the fact may be found (~~i.e.,~~ for example, affidavit, deposition, discovery responses, etc.). A failure to submit a separate statement of facts in this form may constitute grounds for the denial of the motion.

(1) Any party opposing summary judgment must comply with the foregoing in setting forth the specific facts relied upon in opposing the motion or that otherwise establish that a genuine issue of material fact exists that precludes summary judgment.

(2) In the alternative, the moving party and the opponent shall jointly file a stipulation setting forth a statement of the stipulated facts, if the parties agree that there is no genuine issue of material fact. As to any stipulated facts, the parties may state that their stipulations are entered into only for the purposes of the motion for summary judgment and are not to be otherwise binding.

(3) Unless otherwise set forth in the Federal Rules, the Local Rules, or an order of the court, and notwithstanding the provisions of paragraph (c) above, the party opposing or responding to a motion for summary judgment shall have 30 days after service within which to serve and file a responsive memorandum and the moving party shall have 14 days after service of the responsive memorandum to serve and file a reply.

**(h) Accelerated Hearings.** Motions to accelerate hearings or reduce notice periods are disfavored and should not result from delay or inadvertence by the moving party or its counsel. The procedure for requesting such relief shall be governed by the following requirements.

(1) The moving party shall make every practicable effort to notify opposing parties, if any, and shall serve the pleadings at the earliest possible time and by the most expeditious means practicable.

(2) The request for relief shall be a separate motion and bear a caption such as "Motion for Accelerated Hearing" or "Motion to Reduce Notice Period." A proposed order granting the relief requested shall be lodged with the motion.

(3) Such motion shall contain:

(A) The telephone numbers, fax numbers, e-mail addresses and office addresses of the attorneys for the opposing parties;

(B) Facts showing the existence and nature of the claimed emergency; and

(C) When and how counsel for the opposing parties were notified and whether they have been served with the motion, or, if not notified and served, why that was not done.

**(i) Motions for Continuance or Extensions of Time.** Requests for continuance of hearings or extensions of time as to briefing schedules or other matters shall state whether any other party objects to the request, or why the moving party has been unable to determine the other party's position.

**(j) Notice for Motion Requiring a Hearing.** For any motion that requires a hearing, it shall be the responsibility of the moving party to obtain from the court the date, time and location of the hearing and to provide notice thereof to all interested parties in substantially the following format:

(1) In addition to the date, time and location of the hearing, the notice shall specify the details of the requested relief, the deadline for any response or objection, and the requirement that any response or objection be filed with the court and served on the moving party.

(2) The notice may state that the court may vacate the hearing and grant the requested relief if no timely objection is served and filed.

(3) The moving party shall serve the notice as required by the Rules, Local Rules, or order of the court and file a certificate or affidavit of service.

(4) If a bar date notice has been utilized and an objection has been filed with the court or received by the moving party, the moving party shall serve on the objecting party or parties an abbreviated form of notice that states the date, time and location of the hearing, and shall file a certificate or affidavit of service.

**(k) Relief Possible on 21-Day Negative Notice.**

(1) In addition to the bar date procedures established by these Local Rules, unless the court orders otherwise, the moving party may use a 21 day bar date notice for all:

~~(1) Motions to approve § 363 sales other than real property, and other than pursuant to Code §363(h);~~

~~(2)(A) Motions to approve compromises and settlements pursuant to Bankruptcy Rule 9019, except where a party to the settlement is not represented by counsel; Motions to approve § 363 sales other than real property, and other than pursuant to Code §363(h);~~

~~(3)(B) Motions to approve compromises and settlements pursuant to Fed R. Bankr. P 9019, except where a party to the settlement is not represented by counsel;~~

(C) Applications for professional fees;

~~(4)(D) Objections to exemptions claimed by the debtor;~~

~~(5)(E) Motions by debtors to sell or refinance homestead property; ~~and,~~~~

~~(6)(F) Motions to set extend time to assume or reject a claims bar date in lease or executory contract;~~

(G) Motions by debtor to avoid liens; and

(H) Motions by debtor for continuance of automatic stay pursuant to Code §362(c)(3)(B).

(2) All motions and applications using the negative notice process must comply with Local Rule 2002-2.

(3) Notwithstanding the provisions of this Local Rule, the court may order that negative notice is appropriate for other motions or applications on a chapter 11 case by case basis.

The moving party must serve a detailed notice of the motion on all parties entitled to notice, clearly stating the requirement to respond within the time allowed, and must file a certificate of service. Upon expiration of the time stated, plus an additional three days, and provided that no objections have been filed, the moving party may file a certificate of service and of no objection and lodge an appropriate order granting the relief requested. The lodged order must conform to the relief requested in the motion. If an objection is filed, the movant must obtain a hearing date, serve notice on all parties entitled to notice and file a certificate of service.

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Committee Notes 2009: Time deadlines have been amended to be consistent with 2016: The 2014 amendments to Local Rule 9013-1(b) are intended to clarify the Federal fifteen page limit for responses and replies (including supporting memoranda).

Committee Notes 2016: This amendment to Local Rule 9013-1(d) is intended to clarify which motions could be filed *ex parte*.

Committee Notes 2016: Subsection (e) was further amended to define the sincere efforts and procedure that should be followed in the event of a discovery dispute.

Committee Notes 2016: This was changed solely to address formatting issues.

Committee Notes 2016: This local rule has been updated to reference the new Local Rule 2002-2 for proper noticing procedures in connection with matters done via negative notice. This local rule is intended to provide a comprehensive list of all matters for which negative notice is allowed and may not be mentioned in any of the other Local Rules of Bankruptcy Procedure, effective December 1, 2009. Other matters not specifically provided for in these Local Rules may not be handled by negative notice absent specific court order allowing the use of negative notice pursuant to (3).

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Revision Notes:

1. Subsection (g) has been eliminated as the procedure for claim objections is specifically set forth in Local Rule 3007.
2. Subsection (h) has been added.

3. Subsection (3) has been amended to clarify that the court may allow the use of negative notice for actions other than the actions listed in the local rule on a case by case basis.

~~1.4.~~ The comment has been amended to clarify the intent of the rule.