



Clerk's Notes



April 2005

Below is an update of recent and upcoming changes, and suggestions of ways to alleviate problems.

I. Memories of Judge Brahney

If you have any stories or memories of the Hon. Thomas M. Brahney, III that you would like to share, please take a moment and write them down. Your account can be short, long, personal, or something about court. Please e-mail it to JoAnn_Kelly@laeb.uscourts.gov or mail it to her at 500 Poydras St., Suite 741-B, New Orleans, LA 70130 as soon as possible. Mrs. Kelly is compiling a booklet that will be presented to his wife and children.

II. E-Government Act - "Written-Opinion" Requirement

The E-Government Act of 2002 requires that all courts have a website that provides "access to the substance of all written opinions issued by the court regardless of whether such opinions are to be published in the official court reporter, in a text searchable format" by April 16, 2005.

Look on our website for the new "opinions" section that will include written opinions issued after April 16, 2005.

III. Modified Pretrial Notice Forms

Chief Judge Brown has modified his pretrial notice short form to include the following: "All dispositive motions shall be filed and served in sufficient time to permit hearing, and counsel shall set the motion so as to be heard, no later than **30 days** before the trial." The new version is on the website.

IV. Hearing dates and times

We have noticed an increase in the number of notices with incorrect hearing dates and times. Please verify that the dates and times on notices of hearing are correct before filing them. The available hearing dates are posted on our website.

V. Section Numbers

Please verify the correct section number on all pleadings and orders before filing. It causes confusion and waste of time when pleadings are routed to the wrong judge's chambers.

VI. Submitting Proposed Orders

A. Email Addresses

Proposed orders should be sent to:

Section A: SectionAOrders@laeb.uscourts.gov

Section B: SectionBOrders@laeb.uscourts.gov

B. Do not include signature block

When submitting proposed orders, do not include a signature block for the bankruptcy judge. The proposed order should end with the text of the order.

C. Time for submitting orders

Orders related to hearings should be submitted as soon as possible, and no later than noon on the Friday following the applicable motion day. It is acceptable – and even preferred – to submit the order contemporaneously with the filing of the motion. We can hold the order until the hearing date.

D. Be Descriptive

When submitting proposed orders for both sections of court and for **all** types of motions (including ex parte), the following must be included in the text of the order:

1. The name of the party filing the motion;
2. The motion referred to; and
3. The date on which the motion was heard, if applicable.

For example, “In accordance with the hearing held on October 1, 2004 on the motion to dismiss filed by ABC Co., . . . ”

Or, “The motion to dismiss filed by ABC Co. came on for hearing on October 1, 2004, . . . ”

It is insufficient to state: “The foregoing motion considered,” or language to that effect. Filers who do not include the date of the hearing may have their orders refused.

Finally, remember to include a description of the property in orders on motions to lift stay, i.e, “the 2004 Toyota Avalon”, or “12345 Poydras St.”. *See* LBR 5005-1(D).

VII. CM/ECF Issues

A. New Event Code for oppositions to motions for summary judgment

In order to give the judges ample time to review motions for summary judgment before motion days, we have created a new event code for responses and replies to motions for summary judgment. To access the event code, go to “Answer/Objection/Response /Reply”, and click on “Response/Reply to Motion for Summary Judgment” at the appropriate screen. Please use this new code to assist the judges in preparing to rule on motions for summary judgment.

B. Conflicts in chapters during the filing process

During the filing process, filers occasionally select the wrong chapter. This results in the case being opened under one chapter, but the associated petition lists another chapter. For example, the case is opened as a Chapter 13 and the docket sheet indicates a Chapter 13, while the imaged petition states it is a Chapter 7.

In these scenarios, the imaged petition, signed by the debtor, governs. During our quality control check, the clerk’s office will modify the docket sheet to

conform to the petition. We will attempt to contact the filer to advise that the change was made.

In a similar recent situation, the filer opened the case as a Chapter 7 and the imaged petition associated with the case also indicated a Chapter 7. The attorney then called our office to say it was a mistake and it should have been a Chapter 13 case.

Same rule, same result. The imaged petition governs. The filer bears the responsibility of filing a motion to amend the voluntary petition, and of giving notice of the amendment. If the amendment involves a change from a Chapter 13 to a Chapter 7, we charge an additional \$15.00.

C. Filing of documents - PDF's

The clerk's office is not allowed to change PDF documents that have been filed. If practitioners make a mistake during the filing process and associate an incorrect image with a docket entry, the clerk's office will issue a notice of deficiency and an amended or corrected pleading with proper PDF must be filed.

D. Deficient Pleadings

The clerk's office issues notices of deficiencies when a pleading contains certain types of filing errors, such as an incorrect hearing date or time, no certificate of service, etc. Please correct these deficiencies. The failure to correct deficiencies may result in the motion or order being denied.

VIII. Substituting Attorneys

When a new attorney for the debtor is substituted for the previous attorney, the court prefers to have one motion signed by both counsel. It should be captioned as: "Motion to Substitute Counsel" or "Motion to Withdraw and Enroll". The motion must contain the debtor's signature authorizing the substitution of counsel.

If this cannot be done, then the enrolling attorney must file a motion to enroll, which indicates that he/she is the new attorney. **The motion must also include the debtor's signature.** If this is not done, the clerk's office will issue a

deficiency. If the deficiency is not corrected, the matter will be referred to chambers.

IX. Court Address

Reminder that the address of the clerk's office is:

500 Poydras Street, Suite B-601
New Orleans, LA 70130-3386

The old Magazine St. address is incorrect. Also, the courtroom numbers are:

Section A – Courtroom B-709
Section B (Judge Brown) – Courtroom B-705

Please change the addresses on your notices of hearing accordingly.

X. Bankruptcy Legislation

Big changes are around the corner when the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 becomes effective in October of this year. We are getting and will continue to get from Washington D.C. information about the Act and the preparations that we have to make as a result. More information will follow in the upcoming months about this big change.

XI. Finally . . .

Thank you for your attention to these matters. If you have any suggestions on issues that you would like to see addressed in future newsletters, please call Marla Hamilton, Clerk of Court, 589-7820.