

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF LOUISIANA**

**SECTION B PROCEDURES**

**Revised April 23, 2013**

**Judge Brown's Procedure on  
APPLICATION TO EMPLOY COUNSEL  
in Chapter 11 Cases**

Application to Employ Counsel in a Chapter 11 proceeding and Affidavit:

1. **Application** is filed with standard language, signatures by debtor in possession and counsel, and should be filed when case is commenced, along with Form 2016(b).
  - Judge Brown requests that added language be included as follows: "counsel is not aware of anyone who objects to his/her employment."
2. An **affidavit** must have standard language according to the local rules and federal rules of the court (See U. S. Bankruptcy Code, Section 327 and Local Rule \_\_\_\_\_)
  - Added language must be included in the affidavit as follows: "**counsel is not aware of anyone who objects to his/her employment.**"
3. The **Order** is to be submitted through email orders ([SectionBorders@laeb.uscourts.gov](mailto:SectionBorders@laeb.uscourts.gov)), for the judge's signature, which requires a hearing to be set out 21-days with a 7-day objection deadline.
  - Requires an order appointing counsel, pending **final hearing**. (See example below)

Order stating that counsel is appointed on an interim basis, with the additional language, such as, similar language below and should be double spaced. (You can check one of Judge Brown's recent chapter 11 cases.)

**IT IS ORDERED** that the Debtor is authorized to employ "**ATTORNEY'S NAME AND FIRM**" as counsel in all matters relating to the performance of Debtor's duties as debtor-in-possession on an interim basis pending a final hearing.

**IT IS FURTHER ORDERED** that **IF AND ONLY IF A PARTY-IN-INTEREST FILES AN OBJECTION TO COUNSEL'S EMPLOYMENT**, this Court will hold a final hearing on \_\_\_\_\_, in Court Room B-705, 500 Poydras Street, Hale Boggs Federal Building, New Orleans, Louisiana. If no party in interest objects, this Order shall be final for approval of counsel.

**IT IS FURTHER ORDERED** that this Order does not approve debtor's counsel's hourly rates, and the Court specifically reserves its right to review the reasonableness of all fees, including the hourly rate and the time involved.

**IT IS FURTHER ORDERED** that any objection, opposition or response to the Application must be filed with the Clerk's Office, and copy served on counsel no later than \_\_\_\_\_.

4. **Certificate of Service** - The Order must be served on all creditors and a certificate of service must be filed with the clerk's office.

## **DEFAULT JUDGEMENT PROCEDURE**

The procedures to follow for the entry of a default judgment in Section B are as follows:

1. Once you have filed a complaint and served the complaint and the summons properly you must wait until the proper amount of time for filing an answer has elapsed under Federal Rule of Bankruptcy Procedure 7012(a).
2. Once the proper time has elapsed, file a request for Clerk's Entry of Default that states both the date of issuance of the summons and the date of service of the summons.
3. When the Clerk's Entry of Default has been entered, it must be served on the party to be defaulted.
4. Once the Clerk's Entry of Default has been entered and served, there must be a separate Motion for Default Judgment that is accompanied by the following:
  - A. An affidavit from the party or an appropriate witness, NOT the attorney, that sets forth the prima facie case as to liability and damages.
  - B. If the party to be defaulted is an individual, a certificate or affidavit that the party to be defaulted is not an infant, incompetent person, or serving in the military.
  - C. A copy of the Clerk's Entry of Default.
5. Do not set the motion for default judgment for a hearing. If the court can determine from the motion and the affidavits that a default judgment should be granted, no hearing is necessary. If the court cannot make that determination from the motion and the affidavits, then you will be contacted with further instructions.
  - A. Please note, however, that motions for default judgment in cases seeking to deny discharge under § 727 and for a trustee's revocation of a discharge must always be set for hearing.

UNITED STATES BANKRUPTCY COURT  
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**PROCEDURES FOR HEARINGS ON MOTION DAYS IN CHAPTERS 7 & 11**  
**BEFORE BANKRUPTCY JUDGE JERRY A. BROWN**

**Judge Brown hears oral argument on all properly noticed motions set on motion days to which a timely opposition/response has been filed.\***

In addition, Judge Brown hears oral argument (and the mover is required to attend) on the following types of motions even if no opposition/response has been filed:

- motions to compromise
- motions to extend the exclusivity period
- motions to dismiss a Chapter 7 case filed by U.S. Trustee, Chapter 7 trustee, or creditor
- motions to dismiss or convert Chapter 11 cases filed by U.S. Trustee or creditor
- motions to show cause / Court's call docket
- motions for use of or denial of use of cash collateral
- motions for rehearing and/or for new trial

\* Note, this is a change from the Court's prior procedure in which oral argument was required even if no opposition was filed on objections to claims and objections to exemptions filed by the Chapter 7 trustees.

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**NOTICE OF PRETRIAL AND TRIAL PROCEDURES**

This notice governs the procedures for trials and evidentiary hearings in Section B.

All dispositive motions shall be filed and served in sufficient time to permit hearing and a decision before the trial date. Counsel shall set the motion so that it is heard no later than **30 days** before the trial.

A joint pretrial order shall be filed 7 days before the trial. The pretrial order shall set forth as **briefly** as possible:

1. If jurisdiction is contested, the basis for claimed jurisdiction;
2. A statement of all uncontested material facts;
3. A statement of the contested facts (please remember that a lengthy list will not be useful to the court - any number over 10 is *per se* too many, absent unusual circumstances);
4. The issue or issues of law to be determined, including citations to the applicable section(s) of the Bankruptcy Code;
5. A list of witnesses, separated as to "will call" and "may call". Experts, if any, to be designated and their field of expertise stated; and
6. A list of exhibits intended to be introduced at the trial.

Plaintiff's counsel has the initial duty of preparing the joint pretrial order. The pretrial order shall be only one document, and must be signed by all trial attorneys, i.e., separate pre-trial orders are not permitted.

To prepare the joint pretrial order, the parties shall meet, exchange copies of all exhibits, and agree as to the authenticity of exhibits. The exhibits to be introduced at the trial may not be duplicative. Counsel shall compile a joint bench book of consecutively numbered exhibits, arranged chronologically when practicable, the authenticity of which is not contested. All objections other than authenticity are reserved until the trial, but counsel are urged to stipulate to the admissibility of exhibits before the trial.

Counsel shall submit **at the trial** four (4) bound sets of the joint bench book with the exhibits **numerically** (not alphabetically) indexed and tabbed. One set is for the witnesses, one for the Court, one for plaintiff's counsel and one for defendant's counsel. An exhibit with more than 10 pages shall have those pages stamped with beta numbers or numbered using decimals (e.g. the pages of Exhibit 15 shall be numbered 15.1, 15.2, etc.).

Pre-trial orders not in compliance with the above will be returned to counsel and must be re-done before the trial. If counsel has any questions about the pre-trial order, he or she should contact the judge's law clerk.

(Rev'd. April 2013)