

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF KANSAS  
OFFICE OF THE CLERK  
500 State Avenue, Room 161  
Kansas City, Kansas 66101-2417  
913/735-2110**

**April 30, 2012**

**2012 NOTICING CALENDAR  
FOR  
THE HONORABLE ROBERT D. BERGER**

**NOTICING REQUIREMENTS**

**1. Sources.**

You must comply with these noticing and objection deadlines. Most of the important noticing rules are found in Fed. R. Bankr. P. 2002 (Notices to Creditors, Equity Security Holders, United States, and United States Trustee) and 9006 (Time).

**2. Matrix Notices (D. Kan. LBR 2002.1).**

The Clerk sends notices to parties listed on a matrix via the Bankruptcy Noticing Center (“BNC”). The matrix addresses are transmitted to the BNC electronically. For successful address transmission to the BNC, the matrix must comply with the requirements of D. Kan. LBR 1007.2 and any applicable standing orders. Otherwise, the BNC may be unable to read the addresses correctly and unable to deliver the notices. If this occurs, the BNC will let you know which notices are undeliverable and will point out the underlying matrix deficiency (e.g., incomplete address, missing zip code). Within five (5) days after receiving this notification, you must:

- (1) file a change of address; and
- (2) serve any undelivered notices to all parties not served by the BNC.

**3. The Noticing Calendar.**

The Noticing Calendar contains cut-off deadlines, hearing dates, and docket times. The “cut-off deadline” is the date by which pleadings must be filed for placement on that month’s docket.

Any notice that contains an objection deadline date beyond the date of the cut-off deadline noted on the Noticing Calendar will be considered defective.

Pleadings that require additional noticing time under the Bankruptcy Code and Fed. R. Bankr. P. 2002, or other rules, must comply with these instructions.

If you make an error in noticing a pleading, you must file and serve a corrected notice in accordance with these rules.

#### **4. Noticing Procedure.**

To notice a pleading, you must:

- (1) prepare a notice form as set out in sections A or B below;
- (2) serve by first class United States mail, postage prepaid, or through CM/ECF, the motion and notice to opposing counsel, the panel trustee, the United States Trustee, debtor(s), and all parties required by the Rules to be noticed; and
- (3) prepare and file with the Bankruptcy Clerk a Certificate of Mailing in compliance with D. Kan. LBR 9013.3 reflecting service of the pleading and the notice.

Two forms of notice for Judge Berger's Motions Docket for **nonevidentiary** hearings are set forth below. One is a notice that provides for a hearing only if an objection is filed; the other is a notice that sets a hearing even if no objection is filed. You must notice all contested matters (motions, objections, applications, or any other pleading requesting or disputing relief, other than an adversary complaint) according to these instructions.

**Motions and applications filed as contested matters under Fed. R. Bankr. P. 9014 must be served as provided in Fed. R. Bankr. P. 7004.**

To use the following forms in adversary proceedings, you must modify the caption to comply with Fed. R. Bankr. P. 7010.

##### **A. Notice With Opportunity for Hearing.**

To give a notice with opportunity for hearing, you must use the following form (Sample A).

Do not insert in the form an objection deadline date beyond the date of the cut-off deadline noted on the Noticing Calendar.

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*Sample A*  
*(Revised 4/2012)*  
*(No hearing unless objection filed)*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

**In Re:**

Debtor(s). Case No. \_\_\_\_\_

\_\_\_\_\_  
*(Use adversary caption if applicable - Rule 7010)*

**NOTICE WITH OPPORTUNITY FOR NONEVIDENTIARY HEARING  
ON {Name of Pleading} OF {Name of Movant} FOR {Relief Sought}**

**NOTICE IS HEREBY GIVEN** that if you fail to file a written objection to the above motion with the Clerk of the U. S. Bankruptcy Court at Kansas City, Kansas, on or before **{Actual date of objection deadline}**, the Court will enter an order prepared and submitted by the movant within fourteen (14) days of the objection deadline and no hearing will be held.

If you file a timely objection, a nonevidentiary hearing will be held before the U. S. Bankruptcy Court, 500 State Avenue, Room 151, Kansas City, Kansas 66101, on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_m., or as soon thereafter as the Court's schedule permits. If you file an objection, you must appear at the hearing unless you have submitted an agreed order, in advance, signed by all parties or their counsel.

\_\_\_\_\_  
{Signature, Name and Address of Attorney}

**CERTIFICATE OF MAILING**

I hereby certify that copies of the Notice With Opportunity for Hearing together with copies of the *{Title of the Pleading}* were deposited in the United States mail, postage prepaid, on {Date of Mailing}, 20\_\_, addressed to: *{Names and Addresses of Parties} OR {to the persons on the attached Exhibit A to the Notice With Opportunity for Hearing}*.

Signed: \_\_\_\_\_  
{Title, e.g., Attorney for \_\_\_\_\_}  
\_\_\_\_\_  
\_\_\_\_\_

**B. Notice of Nonevidentiary Hearing.**

To notice a pleading to a specific docket hearing date, you must use the following form (Sample B).

Any notice that contains an objection deadline date beyond the date of the cut-off deadline noted on the Noticing Calendar will be considered defective.

You must mail the notice at least fourteen (14) days before the date of the hearing, except when Fed. R. Bankr. P. 2002 requires additional notice time.

You must appear at the hearing unless you have submitted, in advance, an agreed order signed by all parties or their counsel.

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*Sample B*  
*(Revised 4/2012)*  
*(Use to set motion on docket)*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS**

**In Re:**

Debtor(s). Case No. \_\_\_\_\_

\_\_\_\_\_  
*(Use adversary caption if applicable - Rule 7010)*

**NOTICE OF NONEVIDENTIARY HEARING ON  
{Name of Pleading} OF {Name of Movant} FOR {Relief Sought}  
SET FOR {Date and Time of Hearing}**

**NOTICE IS HEREBY GIVEN** that a **nonevidentiary hearing** on the above motion will be held before the U. S. Bankruptcy Court, 500 State Avenue, Room 151, Kansas City, Kansas 66101, on \_\_\_\_\_, \_\_\_\_\_, at \_\_\_\_\_m., or as soon thereafter as the Court's schedule permits.

*If you wish to object to the requested relief, you must file your written objection on or before: \_\_\_\_\_, \_\_\_\_\_.*

\_\_\_\_\_  
*{Signature, Name & Address of Attorney}*

**CERTIFICATE OF MAILING**

I hereby certify that copies of the Notice of Nonevidentiary Hearing together with copies of the *{Title of the Pleading}* were deposited in the United States mail, postage prepaid, on \_\_\_\_\_ *{Date of Mailing}*, 20\_\_\_\_, addressed to: *{Names and Addresses of Parties} OR {to the persons on the attached Exhibit A to the Notice of Nonevidentiary Hearing}*.

Signed: \_\_\_\_\_  
*{Title, e.g., Attorney for \_\_\_\_\_}*

\_\_\_\_\_  
\_\_\_\_\_

## MONTHLY MOTIONS DOCKET

### **5. Nonevidentiary Hearings.**

Hearings scheduled on Judge Berger's Motions Docket are nonevidentiary and allotted a limited time, usually no more than 15 to 20 minutes. If you notice a pleading to the Motions Docket, you must appear to argue your pleading. If you fail to appear, your requested relief may be denied.

Typically, when a pleading noticed to the Motions Docket is brought before the Court, one of the following dispositions of the issue raised will occur:

- (1) it will be announced as settled;
- (2) it will be continued to a future Motions Docket;
- (3) it will be continued to a pretrial/status conference;
- (4) it will be ruled upon by the Court; or,
- (5) it will be set for evidentiary hearing.

### **6. Docket Conflicts.**

If the time for a first meeting of creditors conflicts with the Motions Docket, the Motions Docket takes precedence. You should inform the case trustee of the conflict and work out an alternative appearance time for the first meeting of creditors.

### **7. Pretrial/Status Conferences and Evidentiary Hearings.**

Under Judge Berger's procedures, Pretrial/Status Conferences are not limited to adversary proceedings. Rather, they are also used for contested matters to preliminarily present evidence or legal research. When the facts and the law permit, the Court will rule immediately at the docket call on each matter. If evidence is needed or further study of the facts or law is warranted, the Court may continue the matter to an evidentiary hearing or to a pretrial/status conference.

### **8. Motions for Relief From Stay.**

#### **A. Waiver of Thirty-Day Requirement.**

D. Kan. LBR 4001(a).1 addresses waiver of the thirty (30) day limitation on a hearing under §362. If your motion for relief from stay requires a hearing date prior to the Motions Docket, your motion for relief from stay must be accompanied by a motion for expedited hearing. The motion shall set forth with particularity the reasons for requesting an expedited hearing. Immediately upon filing of the motion, the Clerk's Office should be contacted for a special setting. Once the date and time of the special setting has been established, a proposed order containing that information must be uploaded.

**B. “Drop-Dead” Clauses.**

If you include a “drop dead” clause in an agreement granting conditional stay relief, draft the agreement to provide a thirty (30)-day notice period with right to cure in the event of default. This notice must be served on the debtor and, if applicable, debtor’s counsel. If you do draft such a clause, state with particularity the conditions of default so that the Court can more easily determine whether a default has occurred under the agreement.

**9. Submission of Orders (D. Kan. LBR 9004.1(b)).**

**A. Information for the Signature Page.**

You must include the following information at the top of all signature pages:

- (1) the name of the court
- (2) the case caption, the case number and chapter; and
- (3) the caption of the order and page number.

**B. Date Block for Signature.**

No date blocks should be included in orders.

**C. Stipulated Orders Prohibited Without Prior Pleading.**

The Court will not sign Stipulated Orders unless you have previously filed a pleading requesting the relief sought in the Stipulated Order.

**D. Form of Order for Ruling in Court.**

If the Court announces a ruling at a hearing, you must include the date of the hearing in the first paragraph of the order memorializing the ruling. The order must also include the following language, “The findings of fact and conclusions of law recorded in open court constitute the complete grounds for the Court’s action, as required by Fed. R. Bankr. P. 7052 and Fed. R. Civ. P. 52.”

**E. Form of Order for Notice With Opportunity.**

When you prepare an order on a pleading noticed with an opportunity for hearing, but no objections were filed and no hearing was held, you must so state in the first paragraph of the order, i.e.: (1) that the pleading was noticed with opportunity for hearing, and (2) that no objections were filed and no hearing was held.

**F. Time for Submission of Orders.**

Within fourteen (14) days after a hearing date or an objection deadline, you must upload an order for approval by the Court. The Clerk monitors the timely submission of all orders. If you fail to submit an order within fourteen (14) days of the hearing or objection deadline, your pleading may be dismissed for lack of prosecution or the Court may take other action.

If you cannot meet a deadline, you must file a Motion for Extension of Time before the deadline passes and state the reasons for your request. At the time the motion is filed, a proposed Order Granting Extension of Time must also be uploaded.

/s/ ROBERT D. BERGER  
UNITED STATES BANKRUPTCY JUDGE