

**Chambers Procedures for
Honorable Kevin J. Carey**
(Effective April 1, 2008)

Contact Information:

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United States Bankruptcy Court for the District of Delaware
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GENERAL CHAMBER PROCEDURES

- ◆ Judge Carey follows the General Chambers Procedures applicable to all Judges, except as described below under "First Day Hearings", "Fee Applications" and "Contested Matters." Please refer to the "General Chambers Procedures" on the Court's website under the "Chambers" button.

FIRST DAY HEARINGS

- ◆ Two sets of first day hearing binders should be submitted to Chambers no later than 24 hours prior to the requested day and time for the first day hearing.

FEE APPLICATIONS

- ◆ When submitting final fee applications, all prior, approved fee applications need not be provided, unless there is a dispute regarding a prior, interim award.

CONTESTED MATTERS

- ◆ When the parties believe that a contested matter requires an evidentiary hearing, the parties shall 1) notify Judge Carey's courtroom deputy sufficiently in advance of any scheduled hearing date, so that the Court may determine the appropriate scheduling; and 2) submit a Joint Pretrial Memorandum in the form and manner prescribed by Judge Carey's General Order applicable to adversary proceedings. (Also see the "Joint Pretrial Memorandum" section, below). If the parties do not agree that an evidentiary hearing is required, they should so advise Judge Carey's courtroom deputy and the Court will decide, sua sponte or after consultation with the parties, whether a Joint Pretrial Memorandum is required.
- ◆ If a party intends to file a Bankruptcy Rule 7056 motion (made applicable to contested matters by Bankruptcy Rule 9014(c)), the Court and other parties involved in the contested matter should be advised, so that the appropriate scheduling order may be entered. Unless otherwise ordered, the briefing schedules provided by Delaware Local Bankruptcy Rules 7007-1 and 7007-4 shall apply. Any party requesting oral argument on such motion shall include such request with the Notice of Completion of Briefing.

MOTIONS IN ADVERSARY PROCEEDINGS

- ◆ All motions filed in adversary proceedings shall be subject to Delaware Bankruptcy Local Rule 7007-1 (briefs and schedule). **No hearing will be scheduled unless the Court directs.**
- ◆ Parties may use the common practice of stating in the caption of the notice and motion, in lieu of a hearing date and time, that no hearing will be held unless requested or ordered by the Court, together with the required response or objection date. For purposes of motions before Judge Carey, this will be considered in compliance with Delaware Local Bankruptcy Rule 9004-1(b).
- ◆ Once briefing is completed on the motion, the movant shall file a Notice of

Completion of Briefing, which shall include a list of all relevant pleadings to the motion and related docket numbers, **OR**, a Certificate of No Objection, whichever is more appropriate under the circumstances. (Please note, if a Certificate of No Objection has been filed, a Notice of Completion of Briefing does not have to be filed) Counsel shall then deliver the relevant pleadings to Chambers.

- ◆ All motions submitted under a Notice of Completion of Briefing should be unstapled and in a binder. Motions submitted under a Certificate of No Objection do not require a binder; however, if the pleadings to be submitted are substantial please submit them unstapled in a binder.
- ◆ If there is no objection to a motion, a Certificate of No Objection may then be filed at the conclusion of the objection period and a copy of the motion, the proposed order and the Certificate of No Objection should be forwarded to Chambers. Please do not send a copy of the motion to Chambers until the motion is ready to be ruled upon.

HEARINGS IN ADVERSARY PROCEEDINGS

- ◆ Counsel cannot reschedule or cancel a hearing without the consent of all interested parties and the courtroom deputy. This includes hearings where all matters have Certificates of No Objection filed. The Court will review those matters with Certificates of No Objection and determine if a hearing is necessary. Chambers will then notify counsel to file an Amended Agenda cancelling the hearing.
- ◆ Initial scheduling conferences in adversary proceedings **cannot** be continued. A preliminary hearing will be held and a Scheduling Order shall be presented.
- ◆ If requesting an expedited hearing, a Motion for Expedited Hearing shall be filed and a hard copy, along with a copy of the underlying Motion to be heard, should be delivered to Chambers for review. The Court will then determine the appropriate hearing date. This also applies to Emergency Motions.
- ◆ Each counsel presenting a matter at a hearing is to bring to the scheduled hearing the following:

One unstapled copy of each proposed Order to be handed up for signature. The copy is to be the same as the proposed Order filed with

the Motion and in the hearing binder, unless counsel advises the Court that the Order has been revised and presents a blacklined copy showing the changes made.

SETTLEMENT PROCEDURES

- ◆ Motions to approve the settlement should be filed in both the main bankruptcy case and the adversary proceeding. The Judge assigned to the main case is responsible for approving settlement motions. Upon entry of an order approving a settlement, the adversary proceeding will be closed. Procedures for Motions to Approve a Settlement of an adversary proceeding are set forth in the "Settlement Agreements" section of the Attorney CM/ECF Manual, located on the Court's website.

STATUS CONFERENCES AND REPORTS

- ◆ All Status Conferences before Judge Carey require a Notice of Agenda to be filed in both the main bankruptcy case and all adversary proceedings to which the Status Conference relates. In all instances, counsel for the plaintiff is required to file an up-to-date status report to be submitted with the Notice of Agenda. The Status Report should list the adversary proceedings grouped by Category A through J (see "Instructions for Filing Status Reports" on the Court's home page at www.deb.uscourts.gov (under CM/ECF; Attorney CM/ECF Manual; Status)). The Status Report should detail the date(s) that answers are due, when notices of dismissal or settlement will be filed, discovery deadlines, trial dates, etc.
- ◆ In all cases, the plaintiff shall file a status report forty-five (45) days after the date of the scheduling order, each forty-five (45) days thereafter, and thirty (30), twenty (20), and ten (10) days prior to trial, setting out the status of each unresolved adversary proceeding and the plaintiff shall contemporaneously deliver a copy of the report to Chambers.

HEARING AND CNO BINDERS

(Please refer to the Hearing Binder Guide under the "Chambers" button on the

Court's web site)

- ◆ Judge Carey does not require that all pleadings be included in the hearing binder for Pretrial Conferences. The Complaint and Summons, etc. are not necessary. Plaintiff's counsel shall submit an up-to-date Status Report, outlining the status of each case. The Status Report should list the adversary proceedings grouped by Category A through J (see "Instructions for Filing Status Reports" on the Court's home page at www.deb.uscourts.gov). The Status Report should detail the date(s) that answers are due, when notices of dismissal or settlement will be filed, discovery deadlines, trial dates, etc.
- ◆ Proposed scheduling orders, if at all possible, should be submitted in the binder prior to the hearing. Please note that all proposed scheduling orders for adversary proceedings filed after May 1, 2004 that include a claim for relief to avoid a preferential transfer must comply with Chief Judge Mary F. Walrath's General Order RE: Procedures in Adversary Proceedings. A form scheduling order can be found on Judge Carey's Chambers web page which shows an example of the form of order that should be submitted for approval. The form order may be modified (for example to specify deadlines for disclosure of fact witnesses and/or expert rebuttal witnesses); however, the deadlines contained in the proposed scheduling order should be dateless. In other words, the deadlines should count by a number of days from the filing of the responsive pleading.
- ◆ Generally, binders will be available for firms to pick up at 824 Market St., 5th Fl., outside the lobby of Courtroom 5 and Chambers after the hearing. Please remove them promptly.

JOINT PRETRIAL MEMORANDUM

- ◆ All adversary proceedings must comply with the General Order RE: Pretrial Procedures Set for Trial Before Judge Kevin Carey. The General Order is available on Judge Carey's Chambers web page, which can be found under the "Chambers" drop-down menu on the Court's home page.
- ◆ The Joint Pretrial Memorandum must be filed no later than **three (3) business days** prior to the date set for trial and two (2) copies must be delivered contemporaneously to Chambers. Failure to file the Joint Pretrial Memorandum and deliver two (2) copies to Chambers within the time prescribed may result in adjournment of the trial without further notice to the

parties and a hearing may be scheduled to show cause why sanctions should not be imposed.

- ◆ The parties must notify Chambers as soon as possible if a matter has settled and a Joint Pretrial Memorandum will therefore not be filed. If a matter has settled or has otherwise been resolved, counsel must file a notice of settlement or notice of adjournment of trial in the adversary proceeding. The parties shall also immediately advise Chambers, in writing, of any occurrence or circumstance which the parties believe may suggest or necessitate the adjournment or other modification of the trial setting.

TRIALS

- ◆ In all adversary proceedings filed after May 1, 2004 that include a claim for relief to avoid a preferential transfer, trial shall be held within ninety (90) days of Order Assigning the Adversary Proceeding to Mediation, or as soon thereafter as the Court's calendar permits. The trial date will be scheduled in the Order Assigning the Adversary Proceeding to Mediation. The parties do not need to contact Chambers for a trial date.
- ◆ Trials in all adversary proceedings that are on the same track will be conducted on a trailing docket. Adversary proceedings scheduled for trial on the same date and time will be called sequentially according to their adversary proceeding number starting from the lowest and continuing to the highest. Consequently, all parties are required to appear at the time scheduled without regard to the number of proceedings scheduled for trial that day or the number of their individual adversary proceeding.
- ◆ Trial briefs are optional but if a party chooses to submit a brief, it must be filed no later than three (3) business days prior to the day scheduled for trial. Trial briefs must be docketed and two (2) copies contemporaneously delivered to Judge Carey's Chambers.
- ◆ Counsel is required to notify Chambers as soon as possible if a matter has settled and will not be going forward. Counsel is required to file a notice of trial adjournment stating the reason(s) for adjournment of the trial. The parties shall also immediately advise Chambers, in writing, of any occurrence or circumstance which the parties believe may suggest or necessitate the adjournment or other modification of the trial setting.