

CHIEF JUDGE GREGORY F. KISHEL UNITED STATES BANKRUPTCY COURT

PRACTICE POINTERS AND PREFERENCES

Local Rules

Please refer to www.mnb.uscourts.gov to access the Local Rules and Forms for the United States Bankruptcy Court, District of Minnesota. The Bankruptcy Court's local rules are structured to provide a comprehensive "cookbook" for motion practice, particularly for the form and content of moving and responsive documents, notice requirements, etc. They should always be reviewed carefully before questions are directed to the court.

Attorney Admission

Please refer to Loc. R. Bankr. P. (D. Minn.) 9010-3(a) regarding attorney admission to practice before this court.

Contact with Chambers

When contacting Chief Judge Kishel's chambers with a question regarding a specific case, please have the case name and number ready.

Please contact Chief Judge Kishel's calendar clerk to schedule, reschedule, or continue matters for hearing. If scheduling a matter in a case venued in the court's Fifth Division (Duluth), however, contact the Duluth Bankruptcy Court clerk's office. Chief Judge Kishel's staff should be advised as soon as possible if a scheduled hearing is to be continued or cancelled.

Chief Judge Kishel's judicial assistant and law clerk will not provide legal advice, but will answer questions about the Judge's calendars, policies, and preferences.

Motion Scheduling

Please refer to the Local Rules of Bankruptcy Procedure for the District of Minnesota for basic guidance concerning motion practice. All motions **MUST** have a notice of motion on the locally-prescribed form, including a date and a time for hearing, which may be obtained from Chief Judge Kishel's calendar clerk.

Motions and hearings scheduled before Chief Judge Kishel will be held in

Courtroom 2A, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota.

If no answer is filed in an adversary proceeding, plaintiffs should serve and file motions for default judgment shortly after the answer period has lapsed. Extensions of the time for answer are granted only by leave of court, which may be obtained by stipulation.

Written Submissions

All written submissions must comply with both the Federal Rules of Bankruptcy Procedure, as well as the Local Rules of Bankruptcy Procedure, as to notice, service, and substantive content requirements.

Do not send courtesy copies of motions, briefs, or exhibits to chambers unless requested to do so by Chief Judge Kishel's judicial assistant or law clerk. The Judge and chambers staff review and rely on the court's electronic-format in the first instance.

When filing voluminous exhibits electronically, attach a separate exhibit index explaining where specific exhibits can be found in the electronic attachments.

When making a motion to amend a pleading, or when filing an amended document, a "red-lined" version showing the differences between the original and the proposed should be submitted via e-mail to the Judge's judicial assistant *and* law clerk.

On motions for summary judgment, in particular, Chief Judge Kishel has developed a jurisprudence with a fairly exacting analysis of burdens of production and their shifting, the proper form for submission of evidentiary materials, etc. Use electronic legal research services to obtain his published decisions on these issues and structure written submissions accordingly.

Scheduling Conferences

Adversary proceedings before Chief Judge Kishel will be set on for a telephonic scheduling conference by the Judge's calendar clerk, but only AFTER an answer is filed. Other scheduling and status conferences will be set by the court as appropriate.

After the scheduling conference, Chief Judge Kishel will issue a scheduling order setting forth all deadlines for further litigation and submission to the court for decision.

In-Court Hearings

In-court appearances are necessary, unless advised otherwise by chambers staff.

Be on time; be prepared; wear appropriate attire. Caution your clients and witnesses to dress appropriately.

Be formal in the courtroom, i.e., stand at the lectern to address the court and counsel. Be considerate of opposing counsel and witnesses. *Be professional.* Sanctimoniousness and sarcasm are not tolerated for long in the courtroom, and *ad hominem* attacks and insults are very quickly squelched. There is usually no monopoly on fault for the financial failure that leads to bankruptcy.

Chief Judge Kishel reads the written submissions in advance, so keep that in mind when preparing oral argument. Initially, counsel will be given deference in making their prepared in-court presentations; but their remarks should contain something more to develop their case than was present in their written submissions, by way of different sequence, alternate organization, or more concise statement. Use in-court argument to distill positions and use the oral format to make your most important points convincing.

If a party submits additional case law or exhibits at oral argument, counsel must furnish the additional information to opposing counsel before the hearing is convened. Additional copies should also be provided to the Judge and his law clerk.

Attorneys should use the podium when examining witnesses, but need not ask permission to approach a witness.

Evidentiary Hearings / Trials

The majority of disputes in bankruptcy cases do not present disputes of fact, are amenable to decision via motion, and require only the farming in of transactional history and relevant documents to make a record for fact-finding. Attorneys for movants and respondents should structure their written submissions accordingly.

Evidentiary hearings on motions will be scheduled by the Judge's calendar clerk. Absent exigent circumstances or a need for final relief on an emergency basis, the first-scheduled hearing on any motion that presents contested issues of fact will be treated as a preliminary hearing.

Parties are to confer in advance of trial, cooperate with discovery, submit exhibit and witness lists, and stipulate to uncontroverted facts and admission of exhibits when possible.

Chief Judge Kishel and his colleagues always proceed from the fact that there is

never enough to go around in a bankruptcy case, and most or all parties lack the resources to engage in “satellite litigation” over discovery disputes. Parties and their counsel are expected to conduct as much discovery on an informal basis as possible, to resolve such differences whenever possible, and to bring motions to compel only after all parties have fully complied with the prerequisites set by the Local Rules.

Exhibits should be marked prior to trial. Plaintiff’s exhibits should be numbered and defendant’s should be lettered. Two additional copies of **all** exhibits must be provided at the hearing for the Judge and his law clerk. **NOTE:** The bankruptcy judges are in the process of implementing a system for the use and presentation of exhibits in electronic format. The clerk of the bankruptcy court hosts periodic training events for the program. When Chief Judge Kishel adopts the system for his trials and evidentiary hearings, his scheduling orders will contain the directive and directions for its use by counsel .

Proceedings at Other Locations

Chief Judge Kishel also conducts court on a monthly basis in Duluth, Minnesota. Please refer to the Judge’s NOTICE RE: CALENDAR OF CHIEF JUDGE GREGORY F. KISHEL FOR MATTERS VENUED IN FIFTH DIVISION AT DULUTH, MINNESOTA, which is posted on the court’s Website under “Judges & Offices,” for guidance regarding attendance at hearings on this calendar and other related issues. ***Scheduling for all Duluth cases assigned to Chief Judge Kishel is to be done through the Bankruptcy Court clerk’s office in Duluth. Do not call his calendar clerk in St. Paul, unless Chief Judge Kishel has given advance permission to hold a hearing in St. Paul on a Duluth matter. Such permission will only be given at a scheduling conference, and only if all counsel office in the metro area and the convenience of witnesses and parties supports it.***

Proposed Orders

Proposed orders should be filed with every motion or application. However, *modifications to a proposed order already filed or revisions to a proposed order following a hearing* may be e-mailed to chambers (to the Judge’s law clerk or judicial assistant). Do not attach pleadings such as stipulations, letters, etc. to the proposed orders that are e-mailed to chambers; all such documents should be e-filed first with the clerk’s office, if appropriate, as part of the case docket. Please identify in your subject line the case or adversary proceeding (with file number) to which your proposed order relates.

Transcripts and Other Court Recording-Related Issues

You may contact Chief Judge Kishel's court recorder for copies of the sound recording of any hearing, to order a transcript, or for questions concerning courtroom recording.

Miscellaneous

Please note the spelling of Chief Judge Kishel's name. There is no "c" in it. And he is not the same person as his colleague Judge Robert J. Kressel.

Questions or Concerns

Please address any questions concerning Chief Judge Kishel's calendars to his calendar clerk, law clerk, or judicial assistant as noted above.