

CHAMBERS PROCEDURES: JUDGE ELIZABETH E. BROWN
UNITED STATES BANKRUPTCY COURT, DISTRICT OF COLORADO

Witnesses & Exhibits

The following procedures and deadlines generally apply for evidentiary hearings and trials held before Judge Brown. The Court may set different procedures and/or deadlines in any particular case, so parties should always refer to the specific scheduling order(s) issued in their case.

Prior to the Hearing/Trial:

- All exhibits should be pre-marked prior to the hearing/trial. The Plaintiff/Movant should use numbers and the Defendant/Respondent should use letters.
- If the exhibit exceeds ten (10) pages in length, each page of the exhibit should be sequentially numbered at the bottom of the page.
- Exhibits are generally NOT filed with the Court, except when an objection has been filed (see below).
- Fourteen (14) days prior to the hearing/trial, each party should exchange pre-marked exhibits with one another.
- Fourteen (14) days prior to the hearing/trial, each party must file with the Court and serve on the opposing party (or parties) *a List of Witnesses and Exhibits*. Sample forms are available on this website under *Courtroom Procedures, Form of Witness & Exhibit List*. A party who fails to list a witness or exhibit, may be prohibited from offering this evidence at trial.
- Seven (7) days prior to the hearing/trial, each party must file with the Court and serve on opposing party (or parties) any written objections to the opposing party's exhibits. If an objection is filed, a copy of the contested exhibit should be attached to the objection for the Court's review, unless the nature of the objection involves the fact that the party proffering the exhibit has failed to adequately identify and/or exchange it.
- If a party does not file a written objection, then all objections to admission of the opposing party's exhibits, except as to relevancy, will be deemed waived.
- Equipment is available for presentation of electronic evidence. Any party wanting to present exhibits in an electronic form should contact the Court via email at courtroomf@cob.uscourts.gov to inquire about equipment availability and training at least two weeks prior to the hearing/trial. Additional information about courtroom technology is available on Courtroom F's website. Use of electronic evidence is strongly encouraged. In the near future, the local rules in

CHAMBERS PROCEDURES: JUDGE ELIZABETH E. BROWN
UNITED STATES BANKRUPTCY COURT, DISTRICT OF COLORADO

this district may mandate its use whenever a substantial number of exhibits may be introduced.

- Witnesses are expected to be present in the courtroom to give testimony. **No testimony will be allowed by telephone or declaration.** There are no exceptions to this policy. As an alternative, you may consider presenting the witness' testimony by deposition transcript or video testimony. If a witness will be unavailable for trial and his or her testimony has been preserved through deposition transcripts or video depositions, then this fact should be identified in the List of Witnesses and Exhibits.
 - **Deposition Transcript.** If the witness is "unavailable" due to being outside the subpoena power of the Court, this is a suitable alternative. You may then introduce the transcript, or portions of it, into evidence. Or you may ask a member of your firm or other individual to read portions of it "live" in the courtroom. This option is not available if the witness is "available" to testify, unless you obtain the opposing party's consent. *See* Fed. R. Bankr. P. 7030 and Fed. R. Evid. 804.
 - **Video Presentation.** At present the Federal Rules of Civil Procedure and of Evidence do not make it a matter of right that a party may introduce the testimony of a witness by means of a video-taped deposition. However, if the parties consent to this, the Court is willing to accept testimony in this form. Even without consent, a party may move (well in advance of trial) for permission to do so. Once permission has been granted, the parties seeking to introduce the video must comply with the Court's *Courtroom Technology Procedures*.

At the Hearing/Trial:

- When you arrive for the hearing/trial, deliver to the law clerk three (3) sets of your exhibits. One copy is for the judge, one is for the law clerk, and one is for the witness. These three copies are in addition to any copies a party needs for its own use during the hearing/trial and in addition to the copy that you have previously given to your opponent. If you are using electronic evidence, you will only need to bring one set of your exhibits for use in an emergency (failure of the electronic equipment).
- Exhibits must be presented in one or more three-ring binders. **DO NOT use binders larger than 3 inches in width.** Otherwise, the rings tend to pull apart and open up during court use, causing the exhibits to scatter and a delay in the proceedings. Each exhibit within the binder must be separately tabbed to indicate the appropriate exhibit letter/number. Tabs must extend past the side of the paper

CHAMBERS PROCEDURES: JUDGE ELIZABETH E. BROWN
UNITED STATES BANKRUPTCY COURT, DISTRICT OF COLORADO

so that the witness and the Court may easily locate each exhibit. In the front of each binder, you must include a copy of the party's Exhibit List.

- The Court will generally rule on objections to exhibits at the hearing/trial as the exhibits are offered for admission. You may offer to admit exhibits in batches by stipulation at the outset of the trial or you may offer them as use examine a witness one-by-one.
- Only those exhibits which are specifically admitted during the hearing/trial will be considered by the Court and become part of the evidentiary hearing record.
- Even if the Court admits an exhibit at the hearing/trial, if the party offering the exhibit never refers to the exhibit either during testimony or in closing argument, then in the Court's discretion, it may not review or consider the exhibit, despite its admission into evidence.

After the Hearing/Trial:

- At the conclusion of the hearing/trial, all parties must retain custody of their own exhibits in accordance with Local Bankruptcy Rule 9070-1(a)(3). You will be responsible for submitting your exhibits directly to the appellate court, if an appeal is lodged, as the Court will not retain copies of exhibits.