Practice Pointers for Lawyers
appearing before the
Honorable Michael G. Williamson
Last Revised - *August 24, 2011*

1. **Conduct of Routine Hearings.**

Uncontested Chapter 13 confirmation hearings will be handled by the Chapter 13 trustee prior to the entry of the judge into the courtroom. Even though the judge is not present during the trustee's announcements, please observe courtroom decorum during these hearings because a record is made of the proceedings even prior to the entry of the judge into the courtroom.

Hearings will start at the scheduled time. If you are late and your case is called before you arrive, it is likely that the motion will either be denied for failure to prosecute or granted without opposition. Do not complain to the courtroom deputy when this happens--if you have good grounds for your failure to appear at the scheduled time, you can file a motion for reconsideration.

2. **Courtroom Decorum.**

Make your appearance at the beginning of every hearing, and announce your name clearly and proudly. Mumbling your name is not effective communication. For purposes of the record, you must make your appearance and identify your client at the hearing on every case, even if you appear regularly in the bankruptcy court and are appearing on more than one case on the same day.

Be mindful that one of the courtroom deputy's functions is to record rulings. Therefore, you should not interrupt the courtroom deputy while court is in session concerning scheduling matters. Also, except in special rare circumstances, you should not ask the courtroom deputy to accept papers for filing. Papers are to be filed electronically or with the intake section of the Clerk's office on the 5th floor.

Address all remarks to the court, not to opposing counsel without leave of the court. Refer to all persons using surnames and not by their first names. Stand at the lectern when addressing the court or examining a witness.

3. **Evidence at Hearings.**

Except in unusual situations, typically emergency in nature, the initial hearing on a motion will be noticed as "preliminary." If a hearing is noticed as "preliminary" the court will not permit the introduction of testimony or documentary evidence. However, if it appears from discussion with counsel that there are no material facts in dispute, the court, if otherwise appropriate, will enter dispositive rulings, to include summary judgment on the court's own motion, at the preliminary hearing.

In this regard, while the court will not permit the introduction of testimony or documentary evidence at a preliminary hearing, the court will consider as part of the record affidavits that are offered without objection, uncontradicted proffers of evidence made by counsel, and judicial and evidentiary admissions made by the parties in open court or in the papers and schedules filed with the court.

The court will receive evidence at hearings that are not noticed as "preliminary." For example, if you have filed an emergency motion and want final dispositive relief, you need to bring your witnesses to testify at the hearing.

4. **Make a Record.**

Often, lawyers will come in and argue that as a matter of law they are entitled to the relief they want. That is fine if the parties stipulate to the facts. However, without such a stipulation, there is no record upon which the court can rule. (For example, the record may consist of unopposed affidavits and proffers of evidence, admissions contained in the papers or schedules filed by a party, documentary evidence, or live testimony.)

In addition, summary judgments must be based on a record established by, for example, depositions or affidavits – not simply based on oral proffers made by counsel. See Fed. R. Bankr. P. 7056(e).

5. **Exhibits**.

One of the least-understood rules of local procedure relates to the handling of exhibits at evidentiary hearings. It appears that Local Rule 9070-1 remains a mystery to most lawyers appearing in bankruptcy court. It is the rare case when trial counsel, even experienced trial counsel, shows up with properly tagged exhibits and an exhibit list for the courtroom deputy, opposing counsel, the witness, and the court. To recap, you must provide:

i. Exhibit tags (which should be on 8-1/2 x 11 paper)
ii. Exhibit lists
iii. Sufficient copies (at least four – original to be provided to courtroom deputy, copy for judge, copy for opposing counsel, copy for witness).

The court experiences unnecessary delay in the conduct of its hearings when exhibits are not properly handled. In addition, where there are more than ten exhibits, they should be organized in a binder so all parties can refer to them efficiently and without confusion.

Procedures for introduction of exhibits at evidentiary hearings are set forth in more detail on the court's website at www.flmb.uscourts.gov (click on "Judges" on the home page, then click on Judge Williamson's name).

It is inconvenient when an evidentiary hearing has to be interrupted so counsel can comply with these procedures.

6. **Emergency Filings.**

You can call chambers ahead of time to let the courtroom deputy know that you will be making an emergency filing. However, absent specific instructions from chambers, all filings should be made either electronically or at the intake section of the Clerk's office on the 5th floor. If you deliver a motion that needs immediate attention, tell the intake clerk that the matter is an urgent one. In the case of electronic filing, complete and submit the Emergency Matters-Electronic Case Filing form, located on the court's website at http://www.flmb.uscourts.gov/procedures.

7. **Contents of Motions.**

When drafting your motion, remember this is federal court, and notice pleading rules apply. First ask yourself what the court needs to know, then include that information in the motion. For example, motions for relief from stay are generally sufficient if they include a complete description of the collateral, amount of indebtedness, nature of default (in Chapter 13's, provide a breakdown of pre- and post-petition defaults), and the amount of regular monthly payments. If a foreclosure action is pending or a foreclosure judgment has already been entered, that information should be included as well. However, a tedious recitation as to every document in the loan file is neither needed nor helpful or appreciated. Few motions cannot be made in three or less pages. If there is a novel legal issue, cite the case you are relying on. Otherwise, citation of well-settled law is not helpful.

A motion to approve a sale or to assume a lease should provide particulars regarding the terms of the sale or lease. If the terms are not outlined in the body of the motion, then a copy of the contract or lease should be attached to the motion. If the subject of the motion is a sale of real estate, the closing date should be recited. With respect to motions by chapter 13 debtors to sell homestead property, the court will consider such motions without a hearing, provided the debtors obtain the consent of the chapter 13 trustee. Orders granting such motions should provide that a copy of the closing statement is to be provided to the chapter 13 trustee within ten days after the closing.

Do not combine motions that seek different relief or combine motions with objections. The governing timeframes for notices and hearings may not be consistent. For example, if you file a "Motion to Dismiss or in the Alternative, for Relief from the Automatic

Stay," the clerk must decide whether to deal with the motion under the notice and service requirements of a motion to dismiss or a motion for relief, or both. Since the notice and service requirements are different, this is confusing. Keep them separate, except with respect to a creditor seeking relief with respect to various items of collateral. The creditor may seek such relief in one motion and pay one filing fee.

8. **Review it before you file it.**

It is clear that many counsel filing papers with the court do not review their papers in final form before filing them. They leave it up to staff. This problem is not restricted to lawyers who only appear occasionally in bankruptcy court. It occurs frequently even among the most experienced counsel. For example, papers often refer to exhibits and mailing matrices that are not attached. Where the referenced mailing matrix is not attached, papers are stricken for insufficient service, resulting in the needless expenditure of time by the clerk, court, and counsel. Oversights such as these reflect poorly on counsel.

9. **Briefs.**

As you know, briefs are not required or even welcome in the context of routine matters that the court hears every day. On the other hand, briefs are certainly welcome when a novel or complex issue will be argued at a hearing. Briefs should generally be limited to three pages on small matters and ten pages on large matters. Alternatively, the court welcomes the filing of cases that will be relied on at the hearing so long as the cases are furnished to opposing counsel (cases may be marked up and underlined for emphasis so long as the copies provided to opposing counsel contain the identical markings).

However, when you do file briefs or cases, they are of very little use to the court unless they are filed in a timely manner so as to allow sufficient opportunity for their review in advance of the hearing (delivery to chambers at the end of business hours on the eve of a hearing or on the day of the hearing is not timely!). You should assume that the judge will rule from the bench, and briefs or cases filed at or immediately before the hearing will not be reviewed prior to the court's making its ruling.

10. **Proposed Orders.**

Proposed orders are to include a full, descriptive title and are to be submitted within three days after the hearing. Include complete mailing addresses (not just names) on the service list. Refer to Local Rule 9072-1 when preparing proposed orders. It is not necessary to provide service copies or envelopes.

11. **Continuances**.

Do not assume that a motion for continuance filed at the last minute will be granted. Be prepared for the denial of a last-minute request. If you represent the party with the burden of proof, you should be ready to go forward or suffer the consequences of being unprepared. Refer to Local Rule 5071-1 prior to filing your motion for continuance.

A motion for continuance must recite that you have discussed the proposed continuance with opposing counsel and whether there is any objection to the continuance.

Remember to submit a proposed order along with your request for a continuance. Also, if it is a last-minute request, call and let the courtroom deputy know before filing the motion that you are seeking a continuance.

12. **Telephonic Appearances**.

Telephonic appearances through CourtCall are permitted under certain circumstances for attorneys who are outside of the Tampa Division of the Middle District of Florida. The court's policy on telephonic hearings is set forth in more detail on the court's web site at www.flmb.uscourts.gov (click on "Judges" on the home page, then click on Judge Williamson's name).

13. **Settlements.**

If a settlement is concluded and appropriate paperwork is filed prior to the hearing date, the hearing will be cancelled. Otherwise, at least one party will be required to appear at the hearing to announce the terms of the settlement.

14. **Contacting Chambers/Case Managers.**

It is generally appropriate to call chambers regarding strictly scheduling or procedural matters. Calls may be directed as follows:

Scheduling Matters	Marti Malone Courtroom Deputy	813-301-5522
Procedural Matters	Ed Comey Law Clerk	813-301-5521
Non Case-Related	Mary Maddox Judicial Assistant	813-301-5520

However, the Court may designate a representative of the clerk's office to handle inquiries on specific cases.

It is not appropriate to call chambers for legal advice or to discuss the merits of a motion. Rule 9003 of the Federal Rules of Bankruptcy Procedure prohibits such contact.

Generally, calls regarding the status of a matter should be directed to the case manager. You can get a telephone listing for the case managers from the Clerk's office, or you can access it via the court's web site at www.flmb.uscourts.gov (click on "Locations" on the home page, select Tampa Division, then Staff Phone List). However, before you call the case manager, check the docket yourself – you may be able to answer your own question. In any event, the Administrative Office of the United States Courts has issued directives that prohibit case managers from telling you what is on a docket.

15. **Transcripts of Hearings.**

Bankruptcy Courtroom 8A is equipped with a digital audio courtroom reporting system (FTR Gold). Proceedings in the Courtroom are being digitally recorded in real time and stored on a compact disk (CD).

The audio records of all hearings held in Courtroom8A are available on CD in the FTR Player Plus format. A CD in the FTR format can hold approximately 850 minutes of a single day's hearing. The cost to obtain a CD is $26.00. The required software (FTR Player) can be obtained at no charge at www.ftrgold.com.

To request a CD only (unofficial), fill out the appropriate request form at www.flmb.uscourts.gov/Technology.htm. You will be contacted by the court when a CD copy of the requested hearing is available for pickup at the intake counter on the 5th floor. At the time of pickup, a payment for $26.00 must be made before the CD will be released.

To request an official transcript, contact the court-approved transcription firm, Johnson Transcription Services, at 813-920-1466. At the time of request, the style of the case or adversary proceeding, case/adversary number, and date and time of hearing must be provided. The transcription firm will notify the requester when the transcript is available.