

**WESTERN DISTRICT OF WASHINGTON MOTION PRACTICE
LOCAL RULE 9013-1**

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A. INTRODUCTION

The Federal Rules of Bankruptcy Procedure (“FRBP”) rules governing motion practice are relatively sparse. FRBP 9013 outlines the basic ground rules for motion practice in bankruptcy proceedings.¹ It is the local rules, however, that provide detailed rules and procedures governing motion practice.² The FRBP also contains several rules pertaining to orders, but none give details.³ Finally, when the local rules are silent, each judge may regulate their own court’s procedure “in any manner consistent with federal law, these rules, Official Forms, and local rules of the district.”⁴ The procedural rules governing each judge’s procedural rules are on the website. Although the FRBP controls procedure, it largely defers to each district on the specifics. Therefore, familiarity with the local rules is paramount.

B. TIPS ON MOTION PRACTICE

1. Applicability of Local Rule 9013-1

For motion practice, the most important local rule is 9013-1. Local Rule 9013-1 applies to “any motion, application, objection, or other request for an order or determination of the court.”⁵ Local Rule 9013-1 applies to all motions filed in either adversary proceedings or contested matters unless the rules or the court orders otherwise.⁶ Restated, 9013-1 encompasses most documents a litigant will file with the court. Also, since there is some room for deviation between each judge within the Western District of Washington, it is essential to look to the specific rules of the judge presiding over your case for practices and procedures for that judge available on the Court’s website.⁷

2. Motion Formatting Requirements

All motions must comply with Local Rule 9013-1(d). The movant must include within or with its motion “(i) a statement of all reasons in support of the motion, a memorandum of points and authorities as necessary to support such motion, and (ii)

¹ Fed. R. Bankr. P. 9013

² Fed. R. Bankr. P. 9029(a)(1) (“Each district court . . . may make and amend rules governing practice and procedure in all cases and proceedings within the district court's bankruptcy jurisdiction which are consistent with--but not duplicative of--Acts of Congress and these rules . . .”)

³ See generally Fed. R. Bankr. P. 9021; Fed. R. Bankr. P. 9033; Fed. R. Bankr. P. 9013.

⁴ Fed. R. Bankr. P. 9029(b).

⁵ Local Rules W.D. Wash. Bankr. 9013-1(a). *But see* Local Rules W.D. Wash. Bankr. 9013-1(a) (“except one required to be commenced by complaint pursuant to Fed. R. Bankr. P. 7001.”)

⁶ Local Rules W.D. Wash. Bankr. 9013-1(a).

⁷ <https://www.wawb.uscourts.gov/chambers-information>

all affidavits, declarations and photographic or documentary evidence to be presented in support of the motion.”⁸

The motion and all papers filed in connection with and in response to the motion must include a notation on the top right-hand corner, including:

- (1) the name of the assigned judge,
- (2) the chapter under which the case is pending,
- (3) the location, date, and time of the scheduled hearing, and
- (4) the response date.⁹

The Local Rules prescribe page limitations on motions. Dispositive motions and responses may not exceed 24 pages, and all other motions and responses may not exceed 12 pages unless the parties have obtained prior court approval.¹⁰ Reply briefs may not exceed ½ the permitted length of the opening brief without previous approval of the court.¹¹ If the parties obtain court approval to exceed page length, the Local Rules provide a special procedure for delivering a physical copy upon chambers.¹²

Movants must also ensure they file proposed orders contemporaneously with the underlying motion. All motions must have a proposed order attached as an exhibit to the motion as a separate document.¹³ Opponents may propose alternative orders in the same fashion.¹⁴ As discussed later in this article, proposed orders and judgments must be formatted in accordance with Local Rule 9021-1.¹⁵

3. Setting a Motion for Hearing

The moving party is responsible for obtaining a hearing date.¹⁶ Each bankruptcy judge maintains a regular motion calendar for the court in which they sit.¹⁷ The moving party must set motions on the judge’s calendar assigned to the case unless specifically directed otherwise by the judge's chambers.¹⁸ Generally speaking, the clerk of the court publishes each judge’s motion calendar more than a year in advance.¹⁹

⁸ Local Rules W.D. Wash. Bankr. 9013-1(d)(1)(A).

⁹ Local Rules W.D. Wash. Bankr. 9013-1(d)(1)(B).

¹⁰ Local Rules W.D. Wash. Bankr. 9013-1(d)(1)(C).

¹¹ Local Rules W.D. Wash. Bankr. 9013-1(d)(1)(C).

¹² See Local Rules W.D. Wash. Bankr. 9013-1(d)(4).

¹³ Local Rules W.D. Wash. Bankr. 9013-1(d)(1)(D).

¹⁴ Local Rules W.D. Wash. Bankr. 9013-1(d)(1)(D).

¹⁵ Local Rules W.D. Wash. Bankr. 9013-1(d)(1)(D).

¹⁶ Local Rules W.D. Wash. Bankr. 9013-1(b)(4).

¹⁷ Local Rules W.D. Wash. Bankr. 9013-1(b)(2).

¹⁸ Local Rules W.D. Wash. Bankr. 9013-1(b)(1), 9013-1(b)(4).

¹⁹ See Local Rules W.D. Wash. Bankr. 9013-1(b)(2) (“A schedule of the motion dates, times, and places for each judge's calendar shall be posted at the office of the clerk of court and on the court's website and shall be published in such publications and at such intervals as the clerk of court deems appropriate.”)

In rare instances, a movant may need to contact chambers to obtain a hearing date. For example, if the movant desires an evidentiary hearing, they must request a special setting from the judge's secretary or scheduling clerk.²⁰ Movants should not contact the judge's secretary or scheduling clerk to set a non-evidentiary hearing.

4. Notice of the Motion

The Local Rules prescribe how to provide notice of a pending motion to parties properly. The movant is responsible for providing notice unless otherwise ordered by the court, the Local Rules, or FRBP.²¹ Notice must be given to "the debtor, the debtor's attorney, the trustee, all creditors, all indenture trustees, and any persons requesting special notice under Fed. R. Bankr. P. 2002(i)."²² Special rules apply to motions for relief from stay, use of cash collateral, and financing.²³

The notice must provide both notice of the underlying motion and the hearing date.²⁴ The movant may combine the notice with the motion, provided that (i) the caption so indicates, (ii) the notice is the first part of the text of the pleading, and (iii) the parts are separately headed.²⁵ The notice must clearly state the following:

- (1) the date, time, and place of hearing;
- (2) the nature of the relief requested and the grounds for relief, unless the notice and motion are combined;
- (3) statement that any party opposing the motion must file and serve a written response by the response date, which shall be set out; and
- (4) that if no response is filed by the response date, the court may, in its discretion, grant the motion before the hearing without further notice.²⁶

LBR Form 1 (Notice of Motion and Hearing) provides a template that all notices must substantially comply with.

5. Filing and Service – Time

Movants must file proof that they correctly served their motion on the parties as required. The movant must file "[p]roof of any conventional (non-ECF) service of the notice, and the motion shall be filed by the response date."²⁷ Most motions require

²⁰ Local Rules W.D. Wash. Bankr. 9013-1(b)(3); 9013-1(e)(2)

²¹ Local Rules W.D. Wash. Bankr.9013-1(c)(1); 2002-1(a).

²² Local Rules W.D. Wash. Bankr.9013-1(c)(2)

²³ Local Rules W.D. Wash. Bankr.9013-1(c)(2) ("Motions for relief from stay, use of cash collateral, and financing shall also comply with Local Bankruptcy Rule 4001-1 and 4001-3, respectively.")

²⁴ Local Rules W.D. Wash. Bankr.9013-1(c)(3)

²⁵ Local Rules W.D. Wash. Bankr.9013-1(c)(3)(A).

²⁶ Local Rules W.D. Wash. Bankr.9013-1(c)(3)(B).

²⁷ Local Rules W.D. Wash. Bankr. 9013-1(d)(2)(B).

filing and service at least 21 days before the hearing date unless a longer time is ordered by the court, the FRBP, or within the Local Rules.²⁸

More specific rules govern certain types of motions. “In adversary proceedings, in addition to service of the motion, notice and similar papers as specified in Fed. R. Bank. P. 7005, all supporting memoranda of law, briefs, and other documentation shall be filed and served upon every party.”²⁹ “In contested matters, in addition to service of notice and the motion as specified in Fed. R. Bank. P. 9014, all supporting memoranda of law, briefs, and other documentation shall be filed and served upon the parties against whom relief is sought.”³⁰ A movant must file and serve a claims objection at least 30 days preceding the hearing date.³¹ Objections to claims must also comply with Local Bankruptcy Rule 3007-1. Motions for summary judgment and lien avoidance must be filed and served at least 28 days before the hearing date.³² Cash collateral motions and motions to obtain credit must comply with 11 U.S.C. § 363(c)(3) and Fed. R. Bankr. P. 4001(b) and (c).³³

6. Responses and Replies

The Local Rules establish when and how a party may file responsive pleadings. Parties opposing a motion must file and serve a response at least seven (7) days before the hearing date.³⁴ The movant may file a reply to any response.³⁵ It is important to follow the timing permitted for a response and reply. Otherwise, the court may deem that the motion or opposition to the motion is without merit.³⁶ The Local Rules provide a table for practitioners to use as a reference guide for response deadlines.³⁷

7. Confirming a Hearing

When the court requires a hearing on a motion, the movant or opposing party must confirm the motion for hearing with the court. To confirm a motion for hearing, counsel for any party must docket a Notice to Court of Intent to Argue before the scheduled hearing date in accordance with the deadlines set forth in the briefing schedule contained in the Local Rules.³⁸

²⁸ Local Rules W.D. Wash. Bankr. 9013-1(d)(2)(F).

²⁹ Local Rules W.D. Wash. Bankr. 9013-1(d)(2)(A).

³⁰ Local Rules W.D. Wash. Bankr. 9013-1(d)(2)(A).

³¹ Local Rules W.D. Wash. Bankr. 9013-1(d)(2)(C).

³² Local Rules W.D. Wash. Bankr. 9013-1(d)(2)(D).

³³ Local Rules W.D. Wash. Bankr. 9013-1(d)(2)(E).

³⁴ Local Rules W.D. Wash. Bankr. 9013-1(d)(5)(A).

³⁵ Local Rules W.D. Wash. Bankr. 9013-1(d)(6).

³⁶ Local Rules W.D. Wash. Bankr. 9013-1(d)(7).

³⁷ See Local Rules W.D. Wash. Bankr. 9013-1(d)(8).

³⁸ Local Rules W.D. Wash. Bankr. 9013-1(b)(5).

Hearing Date	Response*	Confirmation*	Reply*
Friday	Friday	noon Monday	Tuesday
Thursday	Thursday	noon Friday	Monday
Wednesday	Wednesday	noon Thursday	Friday
Tuesday	Tuesday	noon Wednesday	Thursday
Monday	Monday	noon Wednesday	Wednesday

* All references in these columns are to days of the week preceding the hearing date. In the event any of the days falls upon a legal holiday, then the deadline for the event shall be determined by counting backward until a day that is not a Saturday, Sunday or legal holiday.

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If no party confirms a hearing by docketing a notice of intent to argue, the court may, *and likely will*, strike the motion unless an agreed order is filed or a default order has been signed pursuant to 9013-1(f)(2).⁴⁰

8. Default—Declaration of No Objection

The Local Rules provide for a special procedure governing default. Except for summary judgment motions in adversary proceedings, if no party objects to a motion in a timely manner, the court may grant the motion by default at the hearing.⁴¹ The court may also grant the motion *before* the hearing if the moving party (1) uploads an ex parte order, accompanied by proof of the service and (2) a declaration of no objection stating the date of service of the notice of the motion and that no objections were timely received.⁴²

9. Settlements and Continuances

If the parties agree to continue a noted hearing or have reached a settlement, they must indicate this on the docket. Parties have an affirmative duty to notify the court of a settlement or withdraw a motion as soon as practicable.⁴³ If the parties agree to continue a hearing, one must docket a Notice to Court Requesting Continuance of Hearing on Motion. This notice is an affirmative representation to the court that consent to the continuance has been obtained from all parties who have filed a responsive pleading.⁴⁴

³⁹ Local Rules W.D. Wash. Bankr. 9013-1(d)(8).

⁴⁰ Local Rules W.D. Wash. Bankr. 9013-1(b)(5).

⁴¹ Local Rules W.D. Wash. Bankr. 9013-1(f)(1).

⁴² Local Rules W.D. Wash. Bankr. 9013-1(f)(2) (emphasis added).

⁴³ Local Rules W.D. Wash. Bankr. 9013-1(d)(6).

⁴⁴ Local Rules W.D. Wash. Bankr. 9013-1(d)(7).

A continuance may toll the response date, depending on when the notice of the continuance is filed. A continuance of a hearing date filed before the response deadline tolls the response deadline to no later than seven (7) days before the continued hearing date unless otherwise ordered by the court.⁴⁵ Conversely, If a hearing date is continued after the response deadline, the deadline will not be tolled absent express consent by the movant.⁴⁶

C. SUMMARY CONCLUSION

Successful motion practice begins with a strong understanding of the governing procedural rules. If practitioners internalize only one thing from this article, it is to review 9013-1. Local Rule 9013-1 addresses the bulk of procedural specificities of motion practice in the Western District of Washington Bankruptcy Court. Practitioners should also familiarize themselves with each judge's procedures page, easily accessible from the Court's website.

⁴⁵ Local Rules W.D. Wash. Bankr. 9013-1(d)(5)(B).

⁴⁶ Local Rules W.D. Wash. Bankr. 9013-1(d)(5)(B).