

**ARGUING NONEVIDENTIARY HEARINGS BEFORE THE  
UNITED STATES BANKRUPTCY COURT**

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## **I. Preparation**

- A. Begin preparation for oral argument while you are drafting your motion or your opposition.
  - 1. Understand that your presentation to the Court includes both your written submissions and your oral argument. While you are drafting be thinking ahead about how you will be orally presenting the case at the preliminary hearing.
  - 2. Resist the temptation to leave a fact or argument out of your written material so you can “spring” it during oral argument.
  - 3. Consider whether there are genuine issues of material fact which will require an evidentiary hearing.
  - 4. Review Fed. R. Bankr. P. 9014 concerning the procedural rules for contested matters.
  - 5. Understand that a preliminary hearing on the Motion for Relief from the Automatic Stay will be a consolidated preliminary and final hearing unless at the conclusion of the preliminary hearing the Court schedules a final evidentiary or non-evidentiary hearing (See MLBR 4001-1(g)).
- B. Carefully review your opponent’s pleadings.
  - 1. Read and consider his/her arguments very carefully and read any bankruptcy code sections or cases cited.
  - 2. Consider whether you should do any further filing prior to the hearing date. If there is an important fact that has been misstated by your opponent or the cases cited are clearly not relevant, do not wait to point

this out during oral argument - you may not get the chance. You want the Judge to have a very clear understanding of the facts and your arguments before you begin your argument.

- C. Consider seeking a continuance of the hearing date.
  - 1. Generally speaking, in Massachusetts, except for Objections to Claims, Fee Applications and Trustee's Final Reports, hearing dates are not scheduled until an opposition is filed. If a hearing is set and you are the moving party you will be notified of the date and time of the hearing and you will be required to serve notice of the hearing on interested parties (See MLBR 9013-1(d)). Whether you are the moving party or the opposing party immediately after you receive notice of the date set by the Court for the hearing, check your schedule to be sure there is no direct conflict and be sure that you will have sufficient time to prepare for your oral argument.
    - a. Contact your opposing counsel to get an agreement on a continued date if a continuance is needed.
    - b. Draft and file a joint motion for the entry of an order to continue the hearing date and file it at least one business day prior to the hearing date (See MLBR 5071-1(b)).
    - c. File a waiver upon request for the hearing on your Motion for Relief for Automatic Stay (See §362(e)).
- D. Spend more time than you think you need on final preparation.

1. Do not wait until the day before the hearing to start preparing your argument.
  2. Review your opponent's pleadings (again) as well as all relevant, rules, bankruptcy code sections and case law as soon as your hearing is set so that you can decide whether further legal research or questioning of your client is necessary.
- E. Determine whether the matter can be settled prior to a hearing or whether the disputed facts or issues can be narrowed.
1. MLBR 9013-1(b) requires that before the filing of any motion, the moving party must make an effort to determine if the motion is unopposed. Even if the matter could not be resolved at the time of the filing of the original motion, that does not mean that it can not be resolved prior to the preliminary hearing. Take a hard look at your case, consider its weaknesses and start a dialogue with opposing counsel to see if a settlement or narrowing of the issues can be achieved.
  2. If a settlement can be reached, prepare a Stipulation and a Motion to Approve the Stipulation and Cancel Hearing. File the Motion and Stipulation as much in advance of the hearing date as possible.
  3. If settlement is reached the evening before the hearing date or on the hearing date, contact the Clerk's office to advise them that while you and your opponent will be appearing for the hearing, you will be advising the Court of the terms of the settlement.
- F. Final Preparation: be afraid – be very afraid.

1. Assume your opponent has the better argument. Even if you think there is no way you can lose, rest assured, there is.
  2. Prepare for sharp questioning by the judge on every aspect of your argument
- G. Do not be afraid – you are going to win.
1. Build yourself up before the hearing. Confidence matters. Be honest with yourself about your argument but remember you are an advocate for a position.
- H. Know your Judge.
1. Understand that Judges have very likely read all the material filed.
  2. Frame your argument for the particular Judge in your case.
- I. The hearing: be on time, courteous and confident.
1. Plan your commute to the hearing so that you will arrive half an hour prior to the hearing.
    - a. Call the Court from the road if you are going to be unavoidably late.
  2. Be courteous to opposing counsel, before, during and after the hearing.
- J. Make your presentation with confidence – you are unlikely to convince the Judge that you should win if you are not confident you should win.
1. Do not read your presentation, but do not try to memorize your presentation word for word. Refer to notes during your presentation that only contain key words or phrases.

2. Have all pleadings, relevant cases and Bankruptcy Code sections handy during your presentation.
3. Avoid snatching defeat from the jaws of victory.
4. Preserve your appellate arguments by being sure that all arguments were either contained in your written material or brought up during your oral presentation.
5. Bring proposed orders.
6. Ask for a continued hearing if new issues come up during the hearing.