

**JUDGE DALES'S PROCEDURES GOVERNING
MOTIONS TO EXTEND THE AUTOMATIC STAY
FILED USING "NOTICE AND OPPORTUNITY TO OBJECT" OR
"NEGATIVE NOTICE" PROCEDURES
(11 U.S.C. § 362(c), LBR 4001-5 & 9013)**

To avoid confusion, surprise, delay, and expense, and to encourage compliance with the 30 day deadline prescribed in 11 U.S.C. § 362(c)(3)(B), effective May 1, 2018, the following procedures will apply in matters assigned to Judge Dales:

THE PROBLEM.

In general, when a bankruptcy case by or against a debtor is the second case filed within the preceding year, the automatic stay terminates as to the debtor on the 30th day of the second case. 11 U.S.C. § 362(c)(3)(A). The court may extend the stay as to any or all creditors if notice and a hearing has been "completed" before the expiration of the 30th day of the case. 11 U.S.C. § 362(c)(3)(B).

A debtor or party in interest may request an extension of the automatic stay by filing a motion using the "negative notice" procedure under LBR 9013(c), if the movant files the motion within 7 days after the commencement of the second case. LBR 4001-5; 11 U.S.C. § 362(c)(3)(B).

Using the "negative notice" procedure under LBR 4001-5 and 9013(c) presents a risk that that in the event the motion draws an objection, the hearing may not be "completed" within the 30 day period prescribed in 11 U.S.C. 362(c)(3)(B), depending on the court's schedule. More specifically, it may be difficult for the moving party to comply with the 30 day hearing deadline when a creditor or trustee files an objection to the motion within the time for objecting but shortly before the 30th day of the case if the court's schedule does not permit it to conduct and conclude the hearing by the statutory deadline.

THE SOLUTION.

1. A party who files a motion to continue the automatic stay *and who anticipates that the motion may draw an objection* should strongly consider using the usual procedures for getting the motion on the court's calendar (per LBR 9013(e)), rather than the "negative notice" procedure (per LBR 4001-5 and 9013(c)).
2. When an objection is filed in response to a motion to continue the automatic stay on negative notice under LBR 4001-5, and the Clerk cannot schedule a hearing within 30 days of the petition date on the court's regular motion day (in the location assigned under LBR 1014), the moving party may file an *ex parte* written request to set the hearing on a non-motion day or on a motion day in another city, in order to meet the 30 day deadline.

3. In making a written request to schedule a hearing on such a motion, the moving party must keep in mind the 7 day notice requirement of Fed. R. Bankr. P. 9006(d) and the possible need to request an order reducing the notice period under Fed. R. Bankr. P. 9006(c)(1).
4. Absent a request for special scheduling as described herein, the court will generally schedule motions to extend the automatic stay on the next available motion day in the assigned location, even if the scheduling may result in denial of the motion (as to objecting parties) for failure to conclude the hearing within the statutory period.
5. The court regards the moving party as responsible for ensuring that the motion to extend the automatic stay be set for hearing at a time that makes it possible to comply with the statutory deadline, as explained in *In re Markoch*, __ B.R. ___, Case No. DK 18–00740, 2018 WL 1882949 (Bankr. W.D. Mich. April 19, 2018). The *Markoch* opinion is available at <http://www.miwb.uscourts.gov/sites/miwb/files/opinions/Markoch.pdf>.