

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

**In re:
Expansion of Standing Order # 20-09
Regarding Modifications of Bankruptcy Court
Procedures and Operations Under the
Exigent Circumstances Created by COVID-19,
Including (i) Conduct of Hearings by Zoom,
(ii) Rules Governing In-Person Appearances,
and (iii) Notices of Motion for Zoom Hearings**

**STANDING ORDER
20-12**

On March 16, 2020, this Court entered Standing Order # 20-09 to describe the modified procedures it was implementing in response to the public health emergency caused by the COVID-19 (coronavirus) outbreak, to balance and maximize the following priorities (i) the health and safety of all constituents involved in bankruptcy court proceedings and hearings, (ii) the need to move cases forward and avoid delay in the delivery of crucial relief, and (iii) comply with the pandemic-related recommendations of national, state and local authorities. The Court enters this Standing Order based on its experience with those new procedures and in recognition that the pandemic, and restrictions flowing from it, are likely to continue for the foreseeable future, and the need to establish clear procedures, in particular, with respect to the conduct of hearings, the restrictions on in-person appearance at hearings, and the language to be used in notices of motion to reflect these changes.

While the Court continues to believe in-person participation at hearings and court-convened conferences is more effective than telephonic participation, or any type of remote participation, the exigent circumstances created by COVID-19, and the health and safety risks associated with in-person hearings, warrant continued application of a more liberal standard for remote participation in this Court's hearings and conferences. In discerning whether and for how long to continue to conduct hearings remotely, the Court gives great weight to four factors: (a) the experience to date with Zoom hearings, of both the Court and bar; (b) whether, and for how long, other bankruptcy-related constituents are fulfilling their responsibilities through technology from remote locations; (c) whether, and for how long, other federal courts in this District are conducting their hearings remotely; and (d) what effect a continuation of remote hearings will have on access to justice and the safety of hearing participants, and the procedures that will be needed to address those priorities.

With respect to the first factor, the Court's experience with Zoom hearings during the pandemic has persuaded it that parties who participate in hearings held via Zoom are able to get the essential benefits of an in-person hearing, the bar and parties who need to appear at hearings are capable of using this technology, any technical issues that arise can be resolved quite quickly, and conducting hearings via Zoom is productive and effective. The Court asked the members of the bankruptcy bar to comment on their experience with Zoom hearings in this Court at the June 19, 2020 Bench Bar meeting, and the feedback the bar offered was unanimously in support of continuing to conduct hearings by Zoom.

As to the second factor, the Court is aware that the U.S. Trustee Program recently announced it is requiring bankruptcy trustees to hold all meetings of creditors (“§ 341 meetings”) either by telephone or video in all cases filed through October 10, 2020, with the caveat that trustees may set in-person § 341 meetings where it appears necessary “to ensure completeness of the meeting or protection of estate property,” and can be done “in a manner that complies with local public health guidance.” This will likely result in §341 meetings being conducted by telephone/video through approximately November 30, 2020.

Regarding the third factor, on June 23, 2020 the U.S. District Court for the District of Vermont entered General Order 92, extending remote hearings for 90 days, through September 1, 2020.

Finally, as to the fourth factor, the Court has advised attorneys and parties involved in matters that may require a trial that (i) the Court will entertain motions requesting an in-person evidentiary hearing, and (ii) the movant will bear the burden of demonstrating why a remote hearing is insufficient and would deprive them of a fair and sufficient hearing. If the Court determines an in-person hearing is necessary, it will specify the restrictions that will be imposed at the hearing to ensure that attorneys, *pro se* parties, witnesses, and court staff are not at undue risk of contracting COVID-19. More details about this procedure are set out below. This approach is consistent with the position members of the bar voiced at the June 19, 2020 Bench Bar meeting.

After taking into account the impact of the pandemic and these four salient factors, THE COURT FINDS it serves the interests of justice to extend and continue Zoom hearings.

THEREFORE, IT IS HEREBY ORDERED, effective immediately and subject to the evolving circumstances of COVID-19 in Vermont, all hearings scheduled through November 30, 2020, will be conducted via Zoom unless the Court orders otherwise, based on a showing of exigent circumstances.

(i) Conduct of Hearings by Zoom

Until the expiration of this Standing Order or further notice, all hearings to be held in this Court shall be held using Zoom. Participants may appear using either audio only or combined audio and video functionality. The courtroom deputy will send the Zoom URL link, meeting ID, and password for the hearing or conference, to the parties who filed the motion, any objection(s) and a notice of appearance in the case, no later than 1 business day before the hearing. Anyone else who wishes to appear at the Zoom hearing may contact the courtroom deputy at (802) 657-6404 to get the information necessary to access the hearing. This information is not to be shared with anyone other than those authorized to appear at the hearing.

Anyone who will be appearing at a hearing via Zoom using only the audio functionality (i.e., by telephone) must use the Zoom link (or Zoom meeting ID and password) for that particular hearing (rather than the usual call-in information for telephonic hearings), and must (i) notify the courtroom deputy at least two business days prior to the hearing that they will be calling in to a hearing, (ii) identify the hearing(s) in which they wish to participate, and (iii) give the courtroom deputy the telephone number from which they will be calling. For security reasons, the Court will not admit phone participants into a hearing if they fail to comply with this requirement.

To maximize the quality of the hearing, all Zoom participants must be on mute except when speaking, and must refrain from using speaker phones. Once they connect via Zoom, participants will find themselves in a “Zoom waiting room,” and they will remain there until the Court is ready to address the matter in which they want to appear, and the courtroom deputy lets them into the Zoom hearing. If a

person experiences any technical difficulties during a Zoom hearing, they will be able to get immediate assistance by emailing the courtroom deputy directly at Jody_Kennedy@vtb.uscourts.gov.

(ii) Rules Governing In-Person Appearances

Any attorney or *pro se* party who believes they or their client will suffer negative consequences if unable to appear at a particular hearing in person (for example, because they need to call witnesses whose credibility is determinative to the issues before the Court), may file a motion, on notice to all attorneys and parties who are expected to appear at the hearing, as well as all attorneys who have filed a notice of appearance in the case, setting forth the legal and factual basis for their request, no later than seven business days before the hearing. Responses to such motions shall due no later than three business days prior to the hearing. All hearings shall proceed via Zoom unless the Court enters an Order providing otherwise.

In the event an attorney or *pro se* party demonstrates exigent circumstances warranting an in-person hearing, the Court shall issue an Order specifying the health and safety precautions that shall be required of the parties and enforced by the Court, to ensure that no one is put at undue risk by attending the hearing and the interests of justice are served. The Court may hold a remote hearing to address the arguments presented by those in favor and those opposed to any in-person hearing.

(iii) Notices of Motion for Zoom Hearings

Notices of Motion, for routine and non-routine motions, using both the default and conventional methods of notice, shall be modified as set forth below, to reflect that all hearings will be held by Zoom unless the Court grants a motion, showing exigent circumstances, that authorizes in-person appearances.

Notices required under Vt. LBR. 9013-2(c) shall include the following language with respect to the conduct of the hearing (modified and new language in red):

Form of Hearing Notice.

For all routine, non-evidentiary motions, the moving party must file and serve a hearing notice specifying (1) the relief sought, (2) the hearing date and time, (3) **state that the hearing will be held via Zoom**, (4) **include a statement that the courtroom deputy will make Zoom information necessary no less than 1 business day before the hearing**, and (5) the response deadline. See Vt. LBR 9013-3 (providing guidelines for noticing a hearing under the conventional procedure); see also Vt. LBR 9013-4 (providing guidelines for noticing a hearing under the default procedure); Vt. LB Forms U-1 and U-2 (model notices of motion for conventional and default procedures).

Hearing Dates/Times. The upcoming Court calendar dates and designated times for hearings are posted on the Court's website, <http://www.vtb.uscourts.gov>, and may also be obtained by contacting the courtroom deputy at (802) 657-6404. The Court has specific days when it hears (A) chapter 7 and 11 matters, and (B) chapter 12 and 13 matters, all of which are set out on the Court's website. Unless a party obtains Court approval in advance by showing good cause to schedule the hearing otherwise, a party filing a motion should schedule a hearing on that motion according to the Court's designated hearing schedule.

Hearing Sites. **In response to the coronavirus pandemic, all hearings will be conducted by Zoom, and should be set for the Court's "Audio-Video / Zoom Location," unless the Court orders otherwise, based on a showing exigent circumstances.**

Notices required under Vt. LBR. 9013-3(b) shall include the following language with respect to the conduct of the hearing:

Form of Hearing Notice.

In addition to the requirements set forth in Vt. LBR 9013-2(c), the following items must be in each notice of motion using the conventional procedure:

Title of Notice. The title of the hearing notice must be “Notice of Motion”;

Response Deadline. The deadline for filing responses to a motion scheduled under the conventional procedure may be no later than 3 business days before the hearing date, and this 3-day period may be included within the required notice period;

Mandatory Language. The following language, in bold and conspicuous print, must be included in the notice:

If the motion is filed in a chapter 7, 12, or 13 case:

*A **HEARING ON THE MOTION** and any responses **will be held** at [time] on [date] **via Zoom, i.e., at the “Audio-Video / Zoom Location,” unless the Court orders otherwise based on a showing exigent circumstances.***

***IF YOU OPPOSE THE MOTION**, you are encouraged to file a written response specifying your opposition to the motion with the Clerk of the Court, **on or before 4:00 P.M. on [a date that is no fewer than 3 business days before the hearing date]**. If you file a written response, you must also serve a copy on the moving party, the debtor, the debtor’s counsel, the United States trustee, and the case trustee (if any). The addresses for those parties are set forth below.*

If the motion is filed in a chapter 11 case:

*A **HEARING ON THE MOTION** and any responses **will be held** at [time] on [date] **via Zoom, i.e., at the “Audio-Video / Zoom Location,” unless the Court orders otherwise based on a showing exigent circumstances.***

***IF YOU OPPOSE THE MOTION**, you are encouraged to file a written response specifying your opposition to the motion with the Clerk of the Court **on or before 4:00 P.M. on [a date that is no fewer than 3 business days before the hearing date]**. If you file a written response, you must also serve a copy on the moving party, the debtor, the debtor’s counsel, the United States trustee, the case trustee (if any), and the creditors’ committee and its counsel or, if no committee is appointed, the 20 largest unsecured creditors. The addresses for those parties are set forth below*

All notices of hearings under Vt. LBR 9013-3 must be in substantial compliance with Vt. LB Form U-1 or Vt. LB Form U-1-11.

Notices required under Vt. LBR. 9013-4(c) shall include the following language with respect to the conduct of the hearing:

Form of Hearing Notice.

In addition to the requirements set forth in Vt. LBR 9013-2(c), the following items must be included in each notice of motion filed under the default procedure:

Title of Notice. The title of the notice must be “Notice of Motion under Default Procedure.”

Response Deadline. The deadline for filing responses to a motion scheduled for a hearing using the default procedure may be no later than 7 days before the hearing date; this 7-day period is in addition to the requisite notice period.

Mandatory Language. The following language, in bold and conspicuous print, must be included in the notice:

If the motion is filed in a chapter 7, 12, or 13 case:

IF YOU OPPOSE THE MOTION, you must file a written response specifying your opposition to the motion with the Clerk of the Court, ***on or before 4:00 P.M. on [a date that is no fewer than 7 days before the hearing date]***. You must also serve a copy of your response on the moving party, the debtor, the debtor's counsel, the United States trustee, and the case trustee (if any). The addresses for those parties are set forth below.

IF A TIMELY RESPONSE TO THE MOTION IS FILED, the Court will hold a hearing on the motion and the response at [time] on [date] ***via Zoom, , i.e., at the "Audio-Video / Zoom Location," unless the Court deems no hearing is necessary or that an in-person hearing is necessary***, and enters an order prior to the time set for the Hearing.

IF NO RESPONSE IS TIMELY FILED, the Court ***may*** deem the matter unopposed and grant the motion without a further hearing. If an order has not been entered before the hearing date, the hearing will proceed ***via Zoom*** and the Movant must appear ***remotely, unless the Court orders otherwise based on a showing exigent circumstances.***

If the motion is filed in a chapter 11 case:

IF YOU OPPOSE THE MOTION, you must file a written response specifying your opposition to the motion with the Clerk of the Court, ***on or before 4:00 P.M. on [a date that is no fewer than 7 days before the hearing date]***. You must also serve a copy of your response on the moving party, the debtor, the debtor's counsel, the United States trustee, the case trustee (if any), and the creditors' committee and its counsel or, if no committee is appointed, the 20 largest unsecured creditors. The addresses for those parties are set forth below.

IF A TIMELY RESPONSE TO THE MOTION IS FILED, the Court will hold a hearing on the motion and the response at [time] on [date] ***at the remote location, i.e., via Zoom, unless the Court deems no hearing is necessary or that an in-person hearing is necessary***, and enters an order prior to the time set for the hearing.

IF NO RESPONSE IS TIMELY FILED, the Court ***may*** deem the matter unopposed and grant the motion without a further hearing. If an order has not been entered before the hearing date, the hearing will proceed and the Movant must appear ***remotely, unless the Court orders otherwise based on a showing exigent circumstances.***

All notices of Hearings under Vt. LBR 9013-4 must be in substantial compliance with Vt. LB Form U-2.

IT IS FURTHER ORDERED the relief authorized by this Standing Order shall be effective immediately and shall apply to **all hearings scheduled through November 30, 2020**, unless the Court orders otherwise.

SO ORDERED.

June 24, 2020
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge