

VBA BANKRUPTCY LAW SECTION
BENCH-BAR BROWN BAG LUNCH MEETING
with Hon. Colleen A. Brown, U.S. Bankruptcy Judge

Held at the United States Bankruptcy Court, via Zoom
Tuesday, May 11, 2021 ~ 12:00 to 1:15 PM

AGENDA

1. UPDATED REPORT FROM THE POST-COVID OPERATIONS TASK FORCE (45 min) BETSY GLYNN
 - Members: Jeff Eaton, Alex Edelman, Betsy Glynn (Chair), Eric Huebscher, Jody Kennedy, Lisa Penpraze, Rebecca Rice, Jan Sensenich, Todd Taylor
 - Particular points for discussion
 - Criteria for appearing remotely
 - What does “remote appearance” mean?
 - Zoomgov will be sole remote modality, replacing telephonic appearances (as VIT did)
 - Notices of motion, *for motions that are eligible for remote participation*, will include both the remote and in person options
 - Never a requirement to appear remotely
 - Testimony will be given in person unless Court Order authorizes otherwise
 - Remote appearance will be available for emergencies (snowstorms, medical, etc)
 - *Copy of Post-Covid Operations TF’s final draft report, and proposed NoM forms, attached*

2. OPTION OF A LOCAL RULES STANDING COMMITTEE (15 min) LISA PENPRAZE
 - Lisa proposes VTB consider adopting the NDNY procedure of a Standing Local Rules Committee (proposal attached)
 - Goal would be to make it easier for the bar

Attachments (4): Post Covid TF memo re procedure; two notice of motion forms; proposal to create standing Order Local Rules Committee

These Bench-Bar lunch meetings are coordinated by the Bankruptcy Court. One CLE credit is provided for attendance at each meeting. Contact Maria Dionne @ 802-657-6432 or maria_dionne@vtb.uscourts.gov with any questions

**Final Report From Post Covid Task Force –
on Bankruptcy Court Remote Procedures in the District of Vermont**

To: Judge Brown

From: Post Covid Task Force:

Betsy Glynn – Chair
Jeff Eaton
Alex Edelman
Eric Huebscher
Jody Kennedy
Lisa Penpraze
Rebecca Rice
Jan Sensenich
Todd Taylor

Date: May 6, 2021

RE: Remote Hearings

CRITERIA FOR REMOTE HEARINGS:

If the hearing and appearance meets the criteria established for appearing via video conferencing (Zoomgov), attorneys and pro se parties may appear remotely.

- (A) Appearance at a remote hearing is limited to instances where:
- (i) a party seeks only to observe;
 - (ii) a party's appearance is necessary only to place on the record a consent or a scheduling agreement;
 - (iii) the total length of combined argument at the hearing is not reasonably expected to exceed 15 minutes;
 - (iv) status hearings in chapters 7, 12 and 13 cases;
 - (v) status hearings in chapter 11 cases, with permission of the Court;
 - (vi) the hearing meets the criteria for remote participation, is properly noticed, and the Court has not directed that the parties must appear in person in the courtroom; or
 - (vii) though it might not appear to meet the eligibility criteria, the Court has specified at a prior hearing that the parties may appear at this particular hearing remotely.
- (B) Unless specifically authorized by the Court, remote hearings may not be used for:
- (i) Chapter 11, 12 and 13 confirmation hearings;
 - (ii) trial or evidentiary matters, or any hearing at which testimony is to be presented; or
 - (iii) hearings that require argument the parties reasonably expect to exceed 15 minutes.
- (C) Special Circumstances - remote hearings may be used for:
- (i) emergency weather conditions, with permission of the Court;
 - (ii) appearance by trial witnesses, upon Order of the Court; or
 - (iii) extraordinary or other emergency circumstances, (i.e. health or safety concerns), with permission of the Court.

PROCESS FOR REMOTE HEARINGS:

1. Appearance modalities in Court - Zoomgov video conferencing participation will be sole modality for remote appearances. It replaces telephonic participation in courtroom hearings. *(There will be no participation in any hearings by telephone unless the participant gets special permission from the Court, in advance, based on exigent circumstances.)*

Participants appearing via Zoomgov must participate with both audio and video. Video and audio must be turned off when a participant is not involved in the hearing taking place. When a participant is “appearing” via Zoomgov they must do so with both audio and video. *(Only exception will be if participant obtains permission to appear by audio only, which is essentially the same as appearing by telephone and thus will require advance permission, based on a showing of exigent circumstances.)*

Courtroom decorum must be maintained at all times.

No party will be required to appear remotely; in person appearance is always an option.

2. Hearing Notices: When noticing a motion (whether under the default or conventional procedure), the movant shall include the Zoomgov option in the notice of motion. Each attorney or pro se party shall determine whether to appear via Zoomgov or in person based on:
 - (a) whether it will serve their / their client’s best interest to be in the courtroom, or to participate via Zoomgov; and
 - (b) whether the presentation they intend to make falls within the eligibility criteria for Zoomgov participation.

If the hearing does meet the Zoomgov criteria, and a party chooses to appear at the hearing via Zoomgov, the scope of their participation will be limited, as set out in the eligibility criteria.

Notice of Motion language:

[see attached drafts forms for Conventional Procedure and Default Procedure]

3. Judge Determination. If the Court determines that all parties presenting arguments must appear in person at a particular hearing, the Clerk’s Office may make a notation on the case docket, no later than three (3) business days prior to the hearing indicating that all parties who wish to be heard at the hearing must appear in person. *(Others who wish only to observe may do so via Zoomgov, as long as they make arrangements with the courtroom deputy in advance.)* If circumstances arising closer in time to the hearing require that change, the Court will so notify the parties at the hearing and continue the hearing to a later date, for an in-person hearing.
4. Notice to Courtroom Deputy. Anyone who wishes to appear at a hearing via Zoomgov must notify the courtroom deputy by email, at Jody_Kennedy@vtb.uscourts.gov, not later than 10 a.m. the day before the hearing, specifying at which hearing(s) they intend to appear and by what screen name. All participants should have a clear and accurate screen name for ease of identification during hearings.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:
_____,
Debtor(s).

Chapter ____
Case # _____

NOTICE OF MOTION UNDER DEFAULT PROCEDURE

A **MOTION FOR** [title of motion] has been filed on [date] by [state the name of the party], through their attorney, _____, seeking [specific relief sought].

IF YOU OPPOSE THE MOTION, you must file a written response with the Clerk of the Court specifying your opposition to the motion, **on or before 4:00 P.M. on [a date that is no less than seven (7) days prior to 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 in a chapter 11 case, the Creditors’ Committee and its counsel or, if no committee is appointed, then upon the 20 largest unsecured creditors. Addresses for those parties are set forth below.

IF A RESPONSE TO THE MOTION IS TIMELY FILED, the Court will hold a hearing on the Motion and any response at [time] on [date] at the following location [indicate Rutland or Burlington location], unless the Court deems no hearing is necessary and enters an order prior to the time set for hearing.

You may appear for the above scheduled hearing in person at the location listed above, or you may also appear virtually by using the Zoomgov application on an electronic device. If you choose to appear by Zoomgov you must:

- (1) Notify the courtroom deputy before 10:00 am the business day before the hearing at: Jody_Kennedy@vtb.uscourts.gov.
- (2) You must keep your camera off and microphone muted until your hearing is announced by the courtroom deputy.
- (3) When appearing for the hearing you must have both your microphone and camera on.

If you have any questions regarding this process you are encouraged to contact the Courtroom Deputy at the above email or at 802-657-6404.

IF NO RESPONSE IS TIMELY FILED, the Court **may** deem the matter unopposed and grant the motion without further hearing. Note: If an order has not been entered before the hearing date, the hearing shall proceed and the Movant must appear.

Dated: _____

By: _____
[Signature of Movant’s attorney]
[typed name, with address, e-mail address, and telephone number]

U.S. Trustee
74 Chapel St, Ste 200
Albany, NY 12207-2190

Counsel for Debtor
[Name of Law Firm, if any]
[Street Address of P.O. Box]
[City, State, Zip Code]

Other interested parties upon
whom Oppositions must be served...
XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXX

[Name], Case Trustee
Chapter [#] Trustee
Street Address or P.O. Box]
[City, State, Zip Code]

DRAFT

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:
_____,
Debtor(s).

Chapter ____
Case # _____

NOTICE OF MOTION UNDER CONVENTIONAL PROCEDURE

A MOTION FOR _____ [*title of motion*] has been filed on [*date*] by [*state the name of the party*], through their attorney, _____, seeking [*specific relief sought*].

A HEARING ON THE MOTION and any responses **will be held** at [*time*] on [*date*] at the following location: [*indicate Rutland or Burlington location*].

You may appear for the above scheduled hearing in person at the location listed above, or you may also appear virtually by using the Zoomgov application on an electronic device. If you choose to appear by Zoomgov you must:

- (1) Notify the Courtroom Deputy before 10:00 am the business day before the hearing, at Jody_Kennedy@vtb.uscourts.gov.
- (2) You must keep your camera off and your microphone muted until your hearing is announced by the courtroom deputy.
- (3) When appearing for the hearing you must have both your microphone and camera on.

If you have any questions regarding this process you are encouraged to contact the courtroom deputy at the above email address or at 802-657-6404.

IF YOU OPPOSE THE MOTION, you are encouraged to file a written response with the Clerk of Court specifying your opposition to the motion, **on or before 4:00 P.M. on [a date that is no less than three (3) business days prior to the hearing date]**. If you file a written response, you must also serve a copy of that written response on the moving party, the debtor, the debtor's attorney, the United States trustee, the case trustee, if any, and, in a chapter 11 case, also on the creditors' committee and its attorney or, if there is no committee, then upon the 20 largest unsecured creditors. Addresses for those parties are set forth below.

Dated: _____

By: _____
[Signature of Movant's attorney]
[typed name, with address, e-mail
address, and telephone number]

U.S. Trustee
74 Chapel St, Ste 200
Albany, NY 12207-2190

For *[Party's Name]*
c/o *[Attorney's Name]*
[Name of Law Firm, if any]
[Street Address or P.O. Box]
[City, State, Zip Code]

Other interested parties upon whom
Oppositions must be served. . .
xxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxx

[Name], Case Trustee
Chapter [#] Trustee
[Street Address or P.O. Box]
[City, State, Zip Code]

DRAFT

**PROPOSAL TO CREATE STANDING LOCAL RULES COMMITTEE
DISTRICT OF VERMONT BANKRUPTCY COURT**

1. With a standing local rules committee, rules can be modified or added throughout the year rather than waiting until a taskforce is formed. This increases responsiveness and reduces delayed implementation of necessary changes.
2. The time commitment is spread out, therefore, less of a burden is placed on the committee members.
3. Representatives of various constituencies would comprise the membership. Certain members would be permanent such as Clerk of Bankruptcy Court, Chief Deputy Clerk, Assistant U.S. Trustee, Standing Chapter 13 Trustee, Judge's career law clerk, Clerk's Office management.
4. Practitioners from the creditor and debtor bar or others would be selected to serve a specified term of years.
5. The Clerk of Court can establish an email address for the Committee and a link on the Court's website to submit same. This provides an easy mechanism for practitioners to identify issues and make suggestions for revisions or new rules in "real time."
6. In this capacity, the Committee acts as a liaison between the local bankruptcy bar and the Judge.