

VBA BANKRUPTCY LAW SECTION
BENCH-BAR BROWN BAG LUNCH MEETING
with Hon. Heather Z. Cooper, Chief U.S. Bankruptcy Judge

Held at the United States Bankruptcy Court, Burlington
September 20, 2022 ~ 12:00 to 1:00 pm

AGENDA

1. CHANGE IN NOVEMBER HEARING DATE JUDGE COOPER
NOTE THAT NOVEMBER 4 CHAPTER 13 DATE IN RUTLAND IS NOW NOVEMBER 1
2. CONVERSATION ABOUT NEW STANDING ORDERS JUDGE COOPER
 - In Person and Remote Hearings (Standing Order # 22-06 and Appendix IX)
 - No last minute requests to Jody for Zoom link
 - Interim Rule 1020 (Standing Order # 22-07)
3. CO-CHAIRS' CORNER A. EDELMAN & D. DUNN
4. UPDATE FROM THE CLERK'S OFFICE JODY KENNEDY
 - Supplementing and Amending Filings vs. Withdrawal of Filings
 - Vt. LBR 3015-7: Court will not consider any document filed after 10:00 a.m. On the last business day preceding the date of the confirmation hearing. This includes affidavits.
5. UPDATE FROM U.S. TRUSTEE'S OFFICE L. PENPRAZE
 - New Federal Rules of Bankruptcy Procedure Rule 5005 takes effect 12/1/22. Eliminates most special notice requirements for UST if documents are filed ECF. See attached Rule 5005 – Filing and Transmittal of Papers
 - Update regarding continuing remote 341 meetings
6. UPDATE FROM THE U.S. ATTORNEY'S OFFICE J. KOCH
7. UPDATE FROM THE CHAPTER 13 TRUSTEE JAN SENSENICH
 - Navigating the Vermont Homeowner Assistance Program
8. NEW BUSINESS JUDGE COOPER
 - 2023 Meetings of Creditors and decoupling Confirmation hearings
 - Bankruptcy Restyled Rules Parts VII to IX, Rules 1007, 4004, 5009, 7001, 9006, and proposed new Rule 8023.1. The public comment period opens on August 15, 2022, and closes on February 16, 2023. <https://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>.
 - Local Rules Committee
9. OTHER BUSINESS

Bench-Bar lunch meetings are coordinated by the Bankruptcy Court.
One hour of Vermont CLE credit is provided for attendance at each meeting.
Contact Lisa Clifford at (802) 657-6432 or Lisa_Clifford@vtb.uscourts.gov with any questions.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

**In re:
CONDUCT OF HEARINGS IN THE
U.S. BANKRUPTCY COURT FOR THE
DISTRICT OF VERMONT**

SUPERSEDING STANDING ORDER # 22-01

STANDING ORDER # 22-06

On January 5, 2022, the United States Bankruptcy Court for the District of Vermont entered Standing Order No. 22-01, addressing court operations related to the conduct of hearings in response to a spike in COVID-19 cases within the communities it serves, converting all hearings to a remote format through Zoomgov. Given current trends with the COVID-19 cases in Vermont, the Court finds that it is appropriate for the Court to revisit operations related to the conduct of hearings and to lift the pandemic restrictions as of **August 1, 2022**.

All scheduled hearings, conferences, trials, or evidentiary hearings will be conducted in accordance with the Vermont Local Bankruptcy Rules, including but not limited to, Appendix IX “Eligibility Criteria and Process for Remote Hearings.” The Court may impose safeguards during such proceedings for those appearing in person to minimize the risk of illness to attorneys, parties, court staff, and the public.

At the option of the Court, a scheduled hearing, conference, trial, or evidentiary hearing may be held using ZoomGov or other remote means. Parties are encouraged to check PACER and the docket of each case for information regarding the manner in which a hearing will be conducted. If the Court determines a scheduled hearing will be held remotely, the parties will receive a notification directly from the courtroom deputy.

This order is based in part on the current levels of prevalence of the COVID-19 virus in the communities served by the Court. Should there be a significant and lasting change in the prevalence levels of the virus in those communities, the Court may revisit this order.

Accordingly, IT IS HEREBY ORDERED that, effective immediately upon entry of this Order:

1. Standing Order # 22-01, in which this Court converted all hearings to a remote format, is superseded and no longer in effect.
2. Appendix X to the Local Rules (Standing Orders Issued Prior to Effective Date of Local Bankruptcy Rules) is revised to clarify that Standing Order # 22-01 is no longer in effect; and
3. Local Forms U-1 and U-2 (Notices of Motion), courtesy copies of which are attached, should be used going forward by all parties when noticing hearings on or after **August 1, 2022**.

SO ORDERED.

July 5, 2022
Burlington, Vermont



Heather Z. Cooper
United States Bankruptcy Judge

Attachments: Vt. LB Forms U-1 and U-2

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 (a) in person at the location listed above; **or** (b) if you meet the criteria for appearing at remote hearings set forth in Appendix IX to the Court's Local Rules (available on the Court's website), you may appear virtually by using the Zoomgov application on an electronic device. If you are eligible for remote participation and choose to appear by Zoomgov, you must follow the process set forth in Appendix IX, including requirements regarding use of both audio and video components, notice to the courtroom deputy, and limitations of remote participation. If you have any questions regarding this process, you are encouraged to contact the courtroom deputy by email at Jody_Kennedy@vtb.uscourts.gov or by telephone 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
11A Clinton Ave., Room 620
Albany, NY 12207

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

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]

[Any other interested parties upon
whom responses must be served]

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 [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 (a) in person at the location listed above; *or* (b) if you meet the criteria for appearing at remote hearings set forth in Appendix IX to the Court's Local Rules (available on the Court's website), you may appear virtually by using the Zoomgov application on an electronic device. If you are eligible for remote participation and choose to appear by Zoomgov, you must follow the process set forth in Appendix IX, including requirements regarding use of both audio and video components, notice to the courtroom deputy, and limitations of remote participation. If you have any questions regarding this process, you are encouraged to contact the courtroom deputy by email at Jody_Kennedy@vtb.uscourts.gov or by telephone 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
11A Clinton Ave., Room 620
Albany, NY 12207

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

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

[Any other interested parties upon
whom responses must be served]

[Name], Case Trustee

For [Party's Name]
c/o [Attorney's Name]

ELIGIBILITY CRITERIA AND PROCESS FOR REMOTE HEARINGS¹

I. CRITERIA FOR APPEARING AT REMOTE HEARINGS

- (A) Appearance at a remote hearing is limited to instances in which:
- (i) a party seeks only to observe; or
 - (ii) a party's appearance is necessary only to place on the record a consent or a scheduling agreement; or
 - (iii) the total length of the hearing is not reasonably expected to exceed 15 minutes; or
 - (iv) the hearing is a status hearing in a chapter 7, 12 or 13 case; or
 - (v) the hearing is a status hearing in a chapter 11 case, and the Court has granted the party permission to participate remotely; and
 - (vi) the hearing meets one of the above 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 above 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 participation in:
- (i) chapter 11, 12 or 13 confirmation hearings;
 - (ii) trial or evidentiary hearings, or other hearings at which testimony is to be presented; or
 - (iii) hearings the parties reasonably expect to exceed 15 minutes.
- (C) Special Circumstances - remote hearings may also 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.

II. PROCESS FOR REMOTE HEARINGS

- (A) Appearance modalities in Court - Zoomgov video conferencing participation will be the 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.*) No party will be required to appear remotely; in person appearance is always an option.
- (B) Participants appearing via Zoomgov must participate with both audio and video during their hearings, and have their video and audio turned off when they are not involved in the hearing taking place. (*The 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.*)

¹ This appendix was created by Standing Order # 21-05 and shall be updated as needed herein.

- (C) Observers may not participate during hearings. They must disclose their presence as an observer at the commencement of the hearing using audio only, and otherwise must have their video and audio turned off during the hearing.²
- (D) Courtroom decorum must be maintained at all times. Whether one is in the courtroom or appearing via Zoomgov, the level of decorum expected is the same.
- (E) 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, see revised Vt. LB Forms U-1 and U-2. Each attorney or *pro se* party shall determine whether to appear via Zoomgov or in person based on:
- (i) whether it will serve their / their client's best interest to be in the courtroom, or to participate via Zoomgov; and
 - (ii) whether the presentation they intend to make falls within the eligibility criteria for Zoomgov participation.
- (F) If the hearing does not meet the Zoomgov criteria, either as filed, or as the result of an objection having been filed, and a party nonetheless appears at the hearing via Zoomgov, the scope of their participation will be limited, as set out above in the eligibility criteria, *e.g.*, the Court may limit or prohibit further argument at the hearing.
- (G) Notice of Motion language must specify the option and instructions for appearing via Zoomgov. See attached forms notices of motion for conventional procedure and default procedure (Vt. LB Forms U-1 and U-2).
- (H) Judge Determination. If the Court determines 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.*)
- (I) 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 must have a clear and accurate screen name for ease of identification during hearings.

² To analogize to being physically present in the courtroom, attorneys who are "participating" remotely would be sitting at the counsel table, and those who are "observing" remotely would be sitting in the gallery area and thus not permitted to speak during the hearing.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**ADOPTION OF AMENDMENTS TO INTERIM
FED. R. BANKR. P. 1020 IN THE
U.S. BANKRUPTCY COURT FOR THE
DISTRICT OF VERMONT IMPLEMENTING
THE BANKRUPTCY THRESHOLD ADJUSTMENT
AND TECHNICAL CORRECTIONS ACT**

STANDING ORDER # 22-07

The Bankruptcy Threshold Adjustment and Technical Corrections Act (Pub. L. 117-151 (2022) (the “BTATC Act”), which was signed into law on June 21, 2022, temporarily increases the debt threshold in Subchapter V of Chapter 11. Consequently, Federal Rule of Bankruptcy Procedure 1020 has been amended on an interim basis to reflect the changes the BTATC Act made with respect to Debtors under Subchapter V.

Accordingly, IT IS HEREBY ORDERED pursuant to 28 U.S.C. § 2071 and Rule 9029 of the Federal Rules of Civil Procedure that, effective immediately upon entry of this Order, the attached amended Interim Rule 1020 is adopted in its entirety without change in this district and shall remain in effect while the BTATC Act Subchapter V limit is in effect.

SO ORDERED.

July 22, 2022
Burlington, Vermont



Heather Z. Cooper
United States Bankruptcy Judge

Attachment: Interim Rule 1020

1 **Interim Rule 1020. Chapter 11 Reorganization Case for**
2 **Small Business Debtors or Debtors Under Subchapter V**

3 (a) ~~SMALL—BUSINESS—DEBTOR~~
4 DESIGNATION. In a voluntary chapter 11 case, the debtor
5 shall state in the petition whether the debtor is a small
6 business debtor or a debtor as defined in § 1182(1) of the
7 Code and, if the latter ~~so~~, whether the debtor elects to have
8 subchapter V of chapter 11 apply. In an involuntary chapter
9 11 case, the debtor shall file within 14 days after entry of the
10 order for relief a statement as to whether the debtor is a small
11 business debtor or a debtor as defined in § 1182(1) of the
12 Code and, if the latter ~~so~~, whether the debtor elects to have
13 subchapter V of chapter 11 apply. The status of the case as
14 a small business case or a case under subchapter V of chapter
15 11 shall be in accordance with the debtor's statement under
16 this subdivision, unless and until the court enters an order
17 finding that the debtor's statement is incorrect.

18 (b) OBJECTING TO DESIGNATION. The United
19 States trustee or a party in interest may file an objection to
20 the debtor's statement under subdivision (a) no later than 30
21 days after the conclusion of the meeting of creditors held
22 under § 341(a) of the Code, or within 30 days after any
23 amendment to the statement, whichever is later.

24 (c) PROCEDURE FOR OBJECTION OR
25 DETERMINATION. Any objection or request for a
26 determination under this rule shall be governed by Rule 9014
27 and served on: the debtor; the debtor’s attorney; the United
28 States trustee; the trustee; the creditors included on the list
29 filed under Rule 1007(d) or, if a committee has been
30 appointed under § 1102(a)(3), the committee or its
31 authorized agent; and any other entity as the court directs.

Committee Note

 The Interim Rule is amended in response to the enactment of the Bankruptcy Threshold Adjustment and Technical Correction Act (the “BTATC Act”), Pub. L. No. 117-151, ___ Stat. _____. The BTATC reinstates the definition of “debtor” for determining eligibility to proceed under subchapter V of chapter 11 that was in effect from March 27, 2020 through March 27, 2022, under the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281, as amended. Subdivision (a) of the rule is amended to reflect that change. This Interim Rule will terminate two years after the date of enactment of the BTATC, unless the Act is extended.

Rule 5005. Filing and Transmittal of Papers

* * * * *

(b) TRANSMITTAL TO THE UNITED STATES TRUSTEE.

(1) The complaints, notices, motions, applications, objections and other papers required to be transmitted to the United States trustee may be sent by filing with the court's electronic-filing system in accordance with Rule 9036, unless a court order or local rule provides otherwise.

(2) The entity, other than the clerk, transmitting a paper to the United States trustee other than through the court's electronic-filing system shall promptly file as proof of such transmittal a statement identifying the paper and stating the manner by which and the date on which it was transmitted to the United States trustee.

(3) Nothing in these rules shall require the clerk to transmit any paper to the United States trustee if the United States trustee requests in writing that the paper not be transmitted.



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

HONORABLE ROSLYNN R. MAUSKOPF
Director

WASHINGTON, D.C. 20544

August 15, 2022

MEMORANDUM

To: All United States Judges
Circuit Executives
Federal Public/Community Defenders
District Court Executives
Clerks, United States Courts
Chief Probation Officers
Chief Pretrial Services Officers
Senior Staff Attorneys
Circuit Librarians
Chief Circuit Mediators
Bankruptcy Administrators

From: Judge Roslynn R. Mauskopf *Roslynn R. Mauskopf*

RE: REQUEST FOR COMMENTS ON PROPOSED AMENDMENTS TO THE FEDERAL
RULES AND FORMS—AUGUST 2022 (**IMPORTANT INFORMATION**)

The Judicial Conference Committee on Rules of Practice and Procedure has approved for publication for public comment the following proposed amendments to existing rules and forms, as well as one new rule:

- Appellate Rules 32, 35, 40, and Appendix on Length Limits
- Bankruptcy Restyled Rules Parts VII to IX, Rules 1007, 4004, 5009, 7001, 9006, and proposed new Rule 8023.1
- Official Bankruptcy Form 410A
- Civil Rule 12
- Evidence Rules 611, 613, 801, 804, and 1006

The proposals and supporting materials are posted on the Judiciary's website at:
<https://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>.

The public comment period opens on August 15, 2022, and closes on February 16, 2023.

If you have any questions regarding this matter, please contact the Rules Committee Staff at (202) 502-1820 or via email at RulesCommittee_Secretary@ao.uscourts.gov.