

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

Tuesday, April 7, 2020 ~ 12:00 to 1:00 PM

Dial-in number: (888) 398-2342. Access code: 846 68 72#

If you dial into the meeting, please use your “mute” function, unless speaking.

AGENDA

1. CHECKING IN RE BK'CY PRACTICE AND VTB PROCEDURES DURING THE PANDEMIC JUDGE BROWN

- It appears the Clerk's Office and bar have adapted quickly and amazingly well to the new world of court procedures we have needed to implement due to COVID-19
- This has been enormously helpful – I appreciate your flexibility and responsiveness
- Any Qs, comments, observations about current procedures? Suggestions for new ones?

From Todd Taylor:

- **During the pandemic, how about a Standing Order giving Ds a 3-month moratorium on Plan pmts, upon proof of loss of job; and**
- **also how this crisis can be handled in terms of a moratorium of existing loan mods mediations that have now been severely affected by the disruption and income loss.**

2. PRACTICE POINTERS FROM THE CLERK'S OFFICE THERESA DAVIDSON

- Until further notice, set ALL hearings for the telephonic location (location 4) in CM/ECF - ***rather than*** for Rutland or Burlington
 - See Standing Order #20-09, which states, “All scheduled hearings and conferences will be conducted telephonically pending further order of the Court” [attached]
 - Court Clerk's Office has sent an email to the bk bar w/ these instructions:
 - When setting hearings, select option #4 Telephonic Hearing.
 - This option is located in the same drop-down menu where one would typically choose either the Burlington or Rutland locations.
 - Feel free to contact the clerk's office if you have any Q.
- If you contact the Clerk's Office through the main line (802) 657-6400, you may need to leave a message. They are monitoring that line throughout the day and will return your call promptly.
- Any Qs for Theresa re Clerk's Office operations during the pandemic?

3. POSSIBLE REVISION OF VT. LBR 3070-1 JAN SENSENICH & JUDGE BROWN

- Prior to 2017, Vt. LBR 3070-1 included a section (c), which provided:
 - (c) **Chapter 13 Trustee's Percentage Fee upon Dismissal or Conversion.** In any Ch 13 case that is dismissed or converted to another chapter prior to the confirmation of the plan, the Chapter 13 trustee may collect from pre-confirmation payments made by the debtor the percentage fee pursuant to 28 U.S.C. § 586(e) as compensation.
- This Rule was deleted during 2017 local rules revision process, at the ch 13 T's request, b/c at that time it appeared to be unnecessary based on the UST's position re ch 13 T comp.
- The ch13 T has now requested the Ct reinstate the provision, as there is a Circuit split of decisions on the issue and the local rule would clarify the procedure in this District.
- Ct seeking input from the bar, at this BB meeting, re whether to reinstate Vt. LBR 3070-1(c).

4. DISCUSSION: WET SIGNATURE REQ'MENT; PROPOSED S.O. # 20-10

JUDGE BROWN

- Draft of proposed standing order (attached) is up for discussion
 - Many Districts have entered orders waiving wet signature requirement, Temporarily, during the pandemic, e.g., CT and WD WA (both attached)
- Topic Open for Discussion Today
 - If there is good reason to enter such a SO, it needs to be entered **ASAP**

5. 2020 SEMINARS OF INTEREST

JUDGE BROWN

- | | | |
|-----------------------------|--------------------|-----------------------------|
| ➤ 2 nd Circ Conf | Saratoga Sprgs, NY | June 2020 - <i>Canceled</i> |
| ➤ ABI Northeast | Rockport, Maine | July 9-11, 2020 |
| ➤ NACTT | San Diego, CA | July 8-11, 2020 |
| ➤ NCBJ Conference | San Diego, CA | October 14-17, 2020 |
| ➤ CRBBA & CNYBBA | Cooperstown, NY | November 6-7, 2020 |
| ➤ NACBA | Koloa, Hawaii | December 1-4, 2020 |

6. NEW BUSINESS?

THE GROUP

- Topics for today? Questions? Comments?

7. NEXT MEETING

- Next meeting is set for June 19, 2020 in Rutland
 - Any suggestions for agenda items to discuss at that meeting?

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

Attachments (5): VTB Standing Order # 20-09
VTB Proposed Standing Order # 20-10
General Order from the Bankruptcy Court for the District of CT, dated 3/23/20
General Order from the Bankruptcy Court for the District of WA # 2020-03

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**Modified Bankruptcy Court Procedures
and Operations Under the Exigent
Circumstances Created by COVID-19**

**STANDING ORDER
20-09**

Since the Governor of the State of Vermont has declared a public health emergency throughout the State urging people to avoid large gatherings, and the Centers for Disease Control and Prevention has advised people to take precautions in light of the COVID-19 virus (coronavirus) outbreak and in particular to take all reasonable steps to avoid being exposed to the virus, this Court is modifying its procedures and operations to align with these recommendations.


Although in-person participation at hearings and conferences is generally more effective than telephonic participation, the exigent circumstances created by COVID-19 warrant application of a more liberal standard for remote participation in this Court's hearings and conferences.

THEREFORE, IT IS HEREBY ORDERED, effective immediately and subject to the evolving circumstances of COVID-19 in Vermont, and until further notice:

1. Scheduled Hearings and Conferences. All scheduled hearings and conferences will be conducted telephonically pending further order of the Court. Any party who wishes to appear in person at a scheduled hearing or conference may file a motion either to appear in person on the scheduled date, or to continue the hearing to a date when in-person appearances are likely to be reinstated, on notice to all affected parties and specifying the legal and factual basis for that request.
2. Evidentiary Hearings and Trials. Evidentiary hearings and trials will be rescheduled unless there are time-sensitive issues which must be addressed immediately. The Court will determine which trials and evidentiary hearings need to be rescheduled, on a case-by-case basis, based on the current record. The courtroom deputy will then contact the attorneys and *pro se* parties involved to set a mutually acceptable new date for the trial or hearing.
3. Regular Operations. The Bankruptcy Court remains open for all other business. Staff in the Clerk's Office will continue to receive and process mail, accept filings, enter filings on the dockets, be present at the intake desk (in Burlington only), and be available by telephone. Electronic filings may still be made through the CM/ECF system. The public is encouraged to continue utilizing Court services while following all applicable public health guidelines.

SO ORDERED.

March 16, 2020
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

(i) Modification of the Original Signature Requirement for Non-Attorneys, as Defined in Vt. LBR. 9011-4(c), and (ii) Modification of Attorneys' Duty to Maintain Original Documents, under Vt. LBR 9011-1(b), in Response to the Exigent Circumstances Created by COVID-19, and the Preventative Measures Enacted in Response to the Pandemic

**STANDING ORDER
20-10**

The Governor of the State of Vermont has declared a public health emergency throughout the State, including a directive to shelter in place and leave home only for essential travel (see Addendum 6 to Executive Order 01-20); and the Federal Court for the District of Vermont has taken steps to dramatically reduce the number of people who need to come to court, to minimize potential exposure to COVID-19 (see General Orders ## 85–88). Since attorneys who practice regularly in this Court file all documents electronically and hearings in this Court are now being conducted exclusively by telephone, it is now possible for bankruptcy cases to proceed without delay and without attorneys coming into the Bankruptcy Court (see Standing Order # 20-09). Additionally, this Court has temporarily modified its procedures to permit chapter 13 plans to be confirmed without debtors appearing at confirmation hearings if they file an affidavit in support of confirmation (see VTB Local Form CV-1) and announced it will grant requests for a continuance or postponement of a hearing based on exposure to, or the consequences of, COVID-19.

The Court is aware, however, that additional relief may be needed with respect to the current requirement for “original” (what some call “wet ink”) signatures of non-attorneys. The pertinent Local Rule states:

VT. LBR 9011-4. SIGNATURES.

(c) Signatures of Non-Attorneys Generally.

All documents submitted for filing by a non-attorney **must be signed in ink (the “original signature”) by the non-attorney. An electronic image of the non-attorney’s original signature is acceptable and shall be treated as the original signature** for purposes of Federal Rule of Bankruptcy Procedure 9011, all other Federal Rules of Bankruptcy Procedure, these Rules, and for any other purpose for which a signature is required in connection with matters before the Court. Further, below their original signature, the signing party must print or type their name, mailing address, e-mail address, and telephone number. See Vt. LBR 9011-2(a).

Vt. LBR 9011-4(c)(emphasis added).

Under the Governor's shelter in place order, debtors and other individual parties in interest are prohibited from going to see their attorney in person, where they can review paper physical documents they need filed in their case and sign them. Moreover, if those debtors or other individual parties in interest do not have printers and scanners or mail delivery at their homes, this may make it difficult, if not impossible, to affix their original (what some call "wet ink") signature on documents they need to file with this Court.

In light of the unique and exigent circumstances created by the pandemic, and the preventative measures the judicial and executive branch have enacted in Vermont in response to the pandemic, THIS COURT FINDS cause to temporarily modify the definition of "original signature" in order to avoid having individuals put their health at risk to obtain bankruptcy relief in Vermont.

Accordingly, IT IS HEREBY ORDERED:

1. If, while this Standing Order is in effect, a non-attorney is unable to execute a document with an "original signature" due to circumstances resulting from COVID-19 or the preventative measures in place in response to the pandemic, then the non-attorney may instead execute the document for filing using a digital signature via a commercially available digital signature software product using two-factor authentication (e.g., DocuSign). Under these circumstances, either means of executing the document is acceptable and shall be treated as the original signature for purposes of Federal Rule of Bankruptcy Procedure 9011, all other Federal Rules of Bankruptcy Procedure, these Rules (see, e.g., Vt. LBR. 1007-1(d), 5005-2(a) & (b)), and for any other purpose for which a signature is required in connection with matters before the Court.
2. While this Standing Order is in effect, Vt. LBR. 9011-4 is amended to read as follows, with the new, modified text in red:

Vt. LBR 9011-4. SIGNATURES.

(c) Signatures of Non-Attorneys Generally.

All documents submitted for filing by a non-attorney must be signed in ink **or via a digital signature software product that uses two-factor authentication. Either means of execution of the document shall constitute the "original signature" of the non-attorney.** An electronic image of the non-attorney's original signature is acceptable and shall be treated as the original signature for purposes of Federal Rule of Bankruptcy Procedure 9011, all other Federal Rules of Bankruptcy Procedure, these Rules, and for any other purpose for which a signature is required in connection with matters before the Court. Further, below their original signature, the signing party must print or type their name, mailing address, e-mail address, and telephone number. See Vt. LBR 9011-2(a).

Vt. LBR 9011-4(c)(emphasis added).

3. The revised definition of "original signature" applies to non-attorney signatures on documents submitted directly by a non-attorney party (a "*pro se*" filer) as well as to the signatures on documents a registered ECF filer submits on behalf of a non-attorney (i.e., their client). It encompasses all documents which require an original signature, including, without limitation, petitions, schedules, and statements.

4. Notwithstanding the revised definition, registered ECF filers should make their best effort to obtain an original signature signed in ink whenever, in their professional judgment, they can do so without putting their health or the health of their client at risk, and without diminishing timely access to justice.
5. For all filings submitted while this temporary Standing Order is in effect, the Local Rule 9011-1(b) requirement that the registered ECF filer maintain a paper original is hereby modified as follows, with the new, modified text in red:

VT. LBR 9011-1. ATTORNEYS – DUTIES AND RETENTION OF DOCUMENTS.

...

(b) Attorney's Duty to Retain Certain Originals of Electronically Filed Documents. The debtor's attorney must retain paper originals of all documents which (1) have signatures and (2) were filed electronically, for 5 years from the date of the filing of the document. If the client's "original signature" was created through the use of a digital signature (e.g., DocuSign), then the "original of electronically filed documents" the attorney must retain includes (i) a paper copy of the filing, and (ii) proof the debtor executed a digital signature on that filing (e.g., DocuSign Certificate of Completion). The filer may be required to provide the originals of electronically filed documents to the Court upon the Court's request, and to other courts upon appropriate orders or subpoena.

6. A registered ECF filer or non-attorney may seek additional modification of this Court's requirements regarding original signatures if necessary to protect their health, the health of their client, or timely access to justice, by filing a motion demonstrating exigent circumstances.
7. This is a temporary Order. It is effective upon entry and shall expire automatically on July 1, 2020, unless the Court orders otherwise.

SO ORDERED.

April 7, 2020
Burlington, Vermont

Colleen A. Brown
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT**

IN RE: TEMPORARY SUSPENSION OF
REQUIREMENT TO OBTAIN DEBTORS
ORIGINAL SIGNATURES

GENERAL ORDER

**ORDER TEMPORARILY SUSPENDING REQUIREMENT TO
OBTAIN ORIGINAL SIGNATURES FROM DEBTORS FOR ELECTRONIC FILINGS**

WHEREAS, the President of the United States has declared a national emergency, and the Governor of the State of Connecticut has declared a public health emergency throughout the State;

WHEREAS, the Governor of the State of Connecticut has issued Executive Order 7H, “Protection Of Public Health And Safety During COVID-19 Pandemic and Response - Restrictions On Workplaces For Non-Essential Businesses, Coordinated Response Effort,” dated March 20, 2020, (“Executive Order 7H”);

WHEREAS, a significant percentage of the documents and pleadings filed in the United States Bankruptcy Court for the District of Connecticut are filed electronically under the Court’s Administrative Procedures for Electronic Case Filing, which are contained in Appendix A to the Local Rules of Bankruptcy Procedure for the District of Connecticut (“Administrative Procedures”);

WHEREAS, section 9 of the Administrative Procedures provides in pertinent part that “[t]he transmission by a Filer or User of any document constitutes certification by the Filer or User that all persons indicated on such document have signed the document and have executed an original prior to electronic filing with the Court;” and

WHEREAS, Executive Order 7H may prevent attorneys from timely obtaining original signatures, thereby interfering with their ability to provide appropriate bankruptcy relief or measures; it is hereby

ORDERED: Effective upon the date of this Order and until further notice, the Court hereby suspends, subject to the conditions stated below, the Administrative Procedures’ requirement that a Filer or User possess the signatory’s original, physical signature before

electronically filing a pleading or document. This suspension is expressly conditioned on the requirement that before filing the document or pleading in question, the Filer or User has either:

a. obtained a digital signature via any commercially available digital signature software that provides signature authentication and maintains a copy of the digitally signed document or pleading in his or her case file;

b. obtains express written permission from the signatory to file the document or pleading in question; and it is further; or

c. obtained in his or her possession at the time of filing an image format or other facsimile of the entire signed document(s), including the signature page(s) received electronically (including by electronic mail or facsimile) from the signor, and will maintain a hard copy thereof in the file; and it is further

ORDERED: The filing of a document or pleading under this General Order constitutes a certification that the Filer or User either has obtained the signatory's original, physical signature or has complied with the foregoing conditions. The electronic signature or the written permission shall have the same force and effect as if the Filer or User possesses the paper original of such document or pleading; and it is further

ORDERED: This General Order does not waive, suspend, limit or alter any other Administrative Procedures requirement, Bankruptcy Code section, Federal Rule of Bankruptcy Procedure or any Bankruptcy Local Rule.

Dated: March 23, 2020

/s/ Julie A. Manning
Chief United States Bankruptcy Judge
Julie A. Manning

Below is the Order of the Court.




Marc Barreca
U.S. Bankruptcy Judge

(Dated as of Entered on Docket date above)

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON**

In re:

CLARIFYING THE ORIGINAL SIGNATURE
REQUIREMENT OF LOCAL BANKRUPTCY
RULE 5005-1(D)(2) AND TELEPHONIC
HEARINGS

General Order No. 2020-03

This General Order is being issued in response to the developing outbreak of Coronavirus Disease 2019 (COVID-19) in Washington State, and in conjunction with the District Court's General Order 02-20, dated March 17, 2020.

Telephonic Hearing Schedule: General Order 02-20 stated that the Bankruptcy Court would continue with scheduled non-evidentiary hearings telephonically as posted on the Court's website and announced by individual judges. The Court further clarifies its procedures as set forth herein.

Original Signature Requirement: The majority of documents filed with the Court are filed electronically in the Court's Electronic Case Filing System (ECF). Local Bankruptcy Rule 5005-1(d)(2) provides that pleadings, affidavits or other documents that require original signatures or verification shall be filed electronically. The rule further provides that "the original signed document, in hard copy or electronic form, shall be maintained" by the attorney or the

1 party originating the document. Current restrictions on social contact due to the COVID-19 may
2 prevent attorneys from timely obtaining original signatures and interfere with the ability to provide
3 appropriate bankruptcy relief.

4 Accordingly, it is hereby **ORDERED**:

5 1. All scheduled non-evidentiary hearings will be heard telephonically, except as
6 specifically directed by the individual judge, until further order of the Court. For evidentiary
7 hearings and trial dates scheduled to occur before June 1, 2020, chambers will determine
8 whether each matter should be continued or conducted in court, telephonically or by video as
9 practicable and will contact parties accordingly.

10 2. Until further order of the Court, the requirement of Local Bankruptcy Rule 5005-1(d)(2)
11 that "the original signed document, in hard copy or electronic form, shall be maintained" by the
12 attorney or the party originating the document is clarified as follows. Before electronically filing
13 a pleading or document requiring a signature or verification, the registered ECF filer must (a)
14 obtain and maintain the signatory's original physical signature, or (b) obtain and maintain the
15 signatory's digital signature via a commercially available digital signature software product that
16 provides signature authentication. The filing of a pleading or document under this General Order
17 constitutes a certification that the registered ECF filer has complied with the foregoing provisions
18 regarding the signature.

19 ///End of Order///
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