

The 14th Anniversary State Bar of Texas Bankruptcy Section Bench Bar 2021

Digital Law Firm in the Age of COVID-19

How Technology has Shaped the Practice of Consumer Bankruptcy Law During  
the Pandemic and Beyond

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## **Introduction**

Innovations in technology have dramatically changed the landscape of how attorneys provide services to their clients and practice law. While many of these technologies had been implemented and used by attorneys and courts before, this became especially true following the unprecedented events created by the COVID-19 Pandemic. As the stay-at-home orders, social distancing guidelines, and quarantines became the new normal, attorneys and courts had to use whatever means necessary to handle clients' bankruptcy filings.

This has led to many positive results and changes. Unburdened by the necessity of being physically present in an attorney's office or courthouse, the implementation of remote process has afforded more flexibility and convenience to clients and attorneys. There is less rushing to find parking for a 10-minute hearing or clients missing time from work for a simple matter or appointment - freeing up more time and costing less money for all involved. There have also been many frustrations.

There are the benign or often even humorous mishaps: dogs and small children making unexpected appearances during virtual hearings; litigants not understanding the requirements for proper courtroom attire or how to use a Zoom filter; the sound of a toilet being flushed during oral arguments in the Supreme Court. Then there are the more serious concerns. For example, time gets wasted as technical issues delay hearings. Additionally, misunderstanding or miscommunication can occur because of a participant's lack technological aptitude.

The virtual practice can also create another layer of detachment from the client to their attorney or the client and the bankruptcy courts and justice system. A system that is already foreign and complicated to many, is now one step further removed and more difficult to understand. With the additional hurdle of understanding the technology being used, this may even result in a miscarriage of justice. Although the use of technology can have many problems, for most situations it can be a useful time and cost saving tool.

So as vaccines are being rolled out and restrictions are being relaxed the question arises. What will the practice of law look like when things return to “normal?”

In this paper we will examine how we have used technology during the COVID-19 pandemic to facilitate the practice of consumer bankruptcy law and then explore how we might continue to use technology and remote practices as we move beyond the pandemic, while still providing ethical and responsive legal representation to our clients.

## **I. Remote 341 Meetings**

Starting in early 2020, concerns surrounding the COVID-19 outbreak saw the Bankruptcy Courts and the U.S. Trustee Program require that 341 meetings and court hearings be conducted by telephone or other forms of remote communication for all bankruptcy cases through the national emergency. *See* appendix A for specific orders and procedures implemented by Texas bankruptcy courts.

Following the notice issued by the United States Trustee and after the continuance of in person 341 meetings, remote meeting practices were adopted. While the specific method may vary from the jurisdiction or trustee, the meetings are now all being conducted remotely without the debtor or counsel present. In the Western District of Texas, for example, this has meant that most 341 meetings are being conducted telephonically.

### **A. Remote 341 Meeting for the “simple” consumer cases.**

In the “simple” Chapter 7 case, the 341 meeting can be a short 10 or 15-minute affair. The trustee asks a standard list of questions to all the debtors and then opens the floor to any creditors that might be in attendance. Practically speaking there are almost never any creditors at the meeting and the meeting gets concluded. (Hopefully).

Telephonic meetings therefore have not had a significant impact on these meetings. Most attorneys have reviewed the petitions and schedules with their clients during the signing appointment and

taken time to go over the general questions they will likely get asked. Most of the questions are yes or no and the debtors can answer them with some relative ease. The biggest issues seem to take place in the first few minutes of the meetings when the meeting participants, usually the debtors but sometimes the attorneys or trustees, are trying to figure out how to mute or unmute the phone, or do not understand that there are several other people on the call, and we can all hear their conversation going on. While these issues can be annoying, they are usually resolved in a matter of a few minutes - usually after the Trustee goes over the instructions and politely asks participants to mute their phones. There are also times where a line has a bad connection, or someone does not understand how to use a conference line that may require someone to step in and help. Again, these issues are normally minor.

Since many meetings on the consumer dockets tend to fall into this category of simple meetings. Allowing the meetings to take place telephonically can be a real boon to all of those involved. No one must set aside additional travel time to the meeting location. If meetings are running long, attorneys and clients who are waiting can quietly look at or do other things while waiting for their case to be called, optimizing their time that day.

#### **B. Remote 341 Meeting in Consumer Cases Going Forward**

While it might be tempting, adopting one-size-fits-all approach to virtual hearings and meetings would fail to address the diverse array of hearings and case types that take place in the practice of bankruptcy law. Cases and hearings should be evaluated based on the type of case and proceeding and factors related to the participants' circumstances. Some essential factors to consider are complexity, urgency, evidentiary requirements, geography, disability, active military duty, self-represented litigants, etc.

In determining whether 341 meetings should continue to be remote there are several factors and approaches that we can examine.

11 U.S.C. § 341(d) requires that:

the trustee shall orally examine the debtor to ensure that the debtor in a case under chapter 7 of this title is aware of-- (1) the potential consequences of seeking a discharge in bankruptcy, including the effects on credit history; (2) the debtor's ability to file a petition under a different chapter of this title; (3) the effect of receiving a discharge of debts under this title; and (4) the effect of reaffirming a debt, including the debtor's knowledge of the provisions of section 524(d) of this title. 11 U.S.C. § 341(d)

Most meetings are an oral examination of the Debtor by the Trustee allowing for question by the creditors. The result is 341 meetings in consumer cases are typically simple and do not require the physical presence of the Debtor. As such the default could be to hold these meetings remotely. However, the complexity of the case can vary from case to case and chapter to chapter. Therefore, procedures should be established for objecting or opting out of a remote 341 meeting.

A Trustee, Debtor, or other party in interest should be able to request an in-person meeting or a 2004 exam depending on the complexity, urgency, and stakes of the matter, as well as the type of fact-finding that the case requires. Relevant characteristics of the parties or participants, such as their access to and fluency with the necessary technology, language barriers or need for interpretation, disabilities, or necessary accommodations, as well as any additional factors highlighted by the objecting party also need to be considered when determining if a remote proceeding is appropriate.

Additionally, the US Trustee program could also adopt a blended approach allowing for both remote and in person 341 meetings depending on the wants and needs of a particular jurisdiction, chapter, or division.

Depending on the demands of a particular region, the US Trustee, Standing Trustee panels, and the bar could decide for their jurisdiction whether the default should be to conduct meetings remotely. This would allow for flexibility of the regions to determine if the Debtors are better served meeting remotely or in person, allowing for determinations based on complexity of cases, availability providing officers, geography, the number of self-represented litigants participating, and other factors. However, this could create issues of uniformity and could encourage forum shopping. For example, a debtor's

attorney who prefers remote meetings might be tempted to file cases in jurisdictions that default to these types of meetings.

### **C. The Use of Interpreters During 341 Meetings**

We have all been there. The chapter 7 trustee is running long and then the next case being called requires an interpreter, and a silent, but somehow still audible, groan can be heard in the 341-meeting room. All kidding aside, the access and justice issues involved in having interpreters during court hearings is of serious concern. Most of the courts have the use of an interpreter service, such as Language Line where an interpreter can be dialed in to interpret for the Debtor. Conducting meetings telephonically has presented a challenge to this system as they cannot be easily joined into the call. Often an attorney or family member will serve as an interpreter for a case or another attorney or third party may be on the line.

The issues involving access to justice and fundamental fairness of using non-court appointed interpreters have been discussed by individuals much smarter than me, but if we continue to use telephonic meetings better systems will need to be put into place to incorporate these as part of the platform or service that we use to conduct the meetings or hearings.

## **II. Remote Court Hearings in Federal Bankruptcy Court**

### **A. Simple Hearings and Court Appearances**

For many simple and routine hearings, attorneys and often the debtors were required to make an appearance in the Bankruptcy Court. During the pandemic, the use of teleconference platforms allowed for a more expeditious way for parties to make an appearance while not taking up too much time.

Matters like a hearing on a reaffirmation agreement, a request for an adjournment on a motion to lift the automatic stay, or confirmation hearing, could presumably be handled virtually. This resulted in both time savings for the parties and an increase in participation.

As with all virtual hearings and meetings, there is the issue with the inability of judges to physically see the debtor or witness when answering their questions. So much of human communication is done through body language and tone. There can be a significant loss of communication when neither party is able to see the other in person. This may be of particular importance during reaffirmation agreement hearings, where a judge may really want to make sure the Debtor understands the gravity and seriousness of the undertaking that is being asked. This makes the judge's decision that much harder to decide.

The biggest issue that handling these types of hearings through a telecommunications platform is when the "simple" hearing turns into a complicated one. Sometimes we thought a hearing would be simple or that we already had an agreement only to find out that the other side disagreed, or the judge disagreed. While these moments can catch anyone off guard in person or remotely, the ability to adapt in the moment and communicate with your client or have exhibits to your client may be severely limited. So as a good practice point, all attorneys should always prepare for any virtual hearing the same as they would for an in-person to hopefully address these matters.

### **B. Complex Hearings and Evidentiary Hearings**

While many of the hearings and meetings involved in a consumer practice are routine, there are still the complex matters that require evidence, witnesses, and have several actors interacting at once. While we often think of commercial Chapter 11 cases being the more judicially complex cases, a contested confirmation hearing on the Chapter 13 docket may involve multiple parties, may require witnesses, and documentary evidence.

Judges and courts have implemented rules for exchanging exhibits ahead of hearings. The platforms allow for presentation of these exhibits during hearings, and multiple parties can make arguments simultaneously. However, these more complicated matters, while often well-argued, along with the use of the technology, even executed with precision, can be far harder and more time consuming

when handled virtually. A virtual evidentiary hearing is like an elaborate machine and can easily be broken by a small grain of sand in the complex gears of the process. A party may not be able to figure out how to unmute their phone to make an objection, the internet connection may be spotty or go out, documents may not have been properly exchanged, and so on. It then becomes more taxing on all the parties involved and most importantly could alter the outcome.

Additionally, the mistakes that can happen in a virtual hearing, such as failing to give your client an exhibit they need to read from, may be severely exacerbated by the virtual setting. So, a simple mistake may turn into a giant mistake because of the telephonic hearing. The tradeoff for convenience of a remote hearing is often the loss of some control that we could have if the meeting were done in person, giving us the ability to confer physically with clients and opposing counsel. None of these issues are unsolvable and procedures are already in place to limit them.

### **III. The Future Remote Hearings**

After over a year of virtual hearings and meetings, the practice of bankruptcy law has changed. There is most likely no going back to the way things were. Some elements of virtual hearings and meetings will continue to be practiced going forward. As we start to sort out the procedures and adopt new rules, there seem to be certain hearings and functions that remote technology is better suited for and others that it is not.

#### **A. Court Hearings**

While the use of virtual hearings can make the bankruptcy system more responsive to typical debtors, deference should be given to the judges to control their dockets and procedures. Judges should be encouraged to expand the use of remote hearings going forward, depending on the complexity of the hearing and the issues presented.

In general, for any proceeding, within a reasonable timeframe, parties should be allowed to request to participate remotely - even if the proceeding itself is not going to be wholly remote.



Prior to COVID-19 many Courts had already adopted procedures to allow for telephonic or remote hearings. We should all be encouraged by the positive results that we have seen during this pandemic and should expand the use of remote hearings.

### **1. Simple non-evidentiary hearings**

For the simple non-evidentiary proceedings, the default should be to hold these hearings remotely while adopting for procedures where a party in interest may object to the remote proceeding or request an in-person, live hearing. Some considerations for determining whether a hearing should be conducted remotely would include: the parties' consent, complexity, urgency, and stakes of the matter, as well as the type of fact-finding that the case requires, and any relevant characteristics of the parties or participants such as their access to and fluency with the necessary technology, language barriers or need for interpretation, disabilities, or necessary accommodations, as well as any additional factors highlighted by the objecting party.

If the judge decides to proceed remotely over the party's objection, the judge must issue a written ruling explaining their reasoning and allow the objecting party options to appeal by motion in the appropriate appellate court.

### **2. Complex or evidentiary hearings**

For complex or evidentiary proceedings, it seems highly likely that we return to the traditional in-person hearing in federal bankruptcy court. While this paper outlines a lot of the wonderful things, we have been able to accomplish with technology, it is likely that all parties would be better served by returning to the court in these situations. However, judges should be given the discretion to elect to use remote proceedings weighing the factors outlined above, and with similar procedures where a party in interest may object to the remote hearing.

### **3. Best Practices for Remote Hearings**

Here are some guidelines and rules used in the Western District of Texas to ensure that the virtual court hearing goes successfully:

- Put your computer or phone on mute if you are not speaking to the Court. Unmute your phone when the Court calls your case so that the Court can hear you.
- Before you speak--each time--state your name.
- Speak slowly and clearly.
- If you use your phone to connect to audio, do not speak using your speakerphone; use the handset. It is fine to put on speakerphone when you are just listening if your phone is on mute.
- If you use computer audio, use a headset with a microphone for better audio quality.
- If you have a choice, use a landline phone, instead of a cell phone. (whichever one is the most clear and quiet) Make the call from a quiet area where there is as little background noise as possible.
- Everyone will have an opportunity to speak. So please do not interrupt others or the Court when someone else is speaking.
- Do not put the phone on hold at any time after the call is connected.
- If you become disconnected before your meeting of creditors is finished, call back.
- If your hearing is over or you want to leave the hearing, just disconnect. You do not need to ask permission to be excused.

### **B. Remote Client Appointments**

During the life of a consumer bankruptcy case there are typically at least two meetings an attorney will have with their client. Often there are many more meetings, but there are at least two crucial meetings that will take place: the initial consultation and the signing appointment.

During the initial consultation, the attorney will gather the debtor's facts, which allow them to analyze the debtor's financial situation. While this meeting can seem informal and straightforward, it is probably one of, if not the most, crucial step in the case. When interviewing the debtor or debtors, an attorney will need to discuss a variety of issues, topics, and disclosures.

Much of this can be accomplished with written disclosures and paperwork that can be emailed to the potential client prior to engagement, of course you will still need to provide at least the broad strokes to ensure their understanding. Homework packets and document collection will also assist the debtor's attorney in ensuring that information is accurate.

During the signing appointment the attorney will review the petition, schedules, and statements with the debtor and likely re-review pertinent obligations and duties. There is also the added responsibility of walking the debtor through the remaining steps of the case.

The ability to screen-share and have a client follow along with the attorney while reviewing the petition is extremely helpful. It allows clients to better understand the documents as the attorney reviews them ask contemporaneous questions and offer additional information during the review.

While it is certainly possible to accomplish all this remotely there are several practice points that outlined below:

- Use video chat or video conference services over telephonic meetings whenever possible. The ability to see the individual who you are speaking allows for better and more effective communication and understanding.
- Use video chat or conferencing services to confirm the client's identity.
- Establish security procedures for video conferencing security.<sup>1</sup>

An attorney who is meeting clients remotely can still adequately provide proper representation. It is important to remember that practicing virtually does not change or diminish obligations to clients.

A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client and should be responsible for their work product. MODEL RULES OF PROF'L CONDUCT R. 1.6 cmt.

#### **IV. Debtor's Technological Aptitude and Cost Factors to Consider**

##### **A. Video Conference Versus Telephonic Meetings or Hearings**

With most 341 meetings and court hearings being handled telephonically, the ability for any of the parties to see or convey body language and other non-verbal cues is eliminated. This can be

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<sup>1</sup> Pennsylvania recently highlighted the following best practices for videoconferencing security: • Do not make meetings public; • Require a meeting password or use other features that control the admittance of guests; • Do not share a link to a teleconference on an unrestricted publicly available social media post; • Provide the meeting link directly to specific people; • Manage screensharing options Pennsylvania Bar Ass'n Comm. on Legal Ethics & Prof'l Responsibility, Formal Op. 2020-300 (2020) (citing an FBI press release warning of teleconference and online classroom hacking).

significant to who may be asking questions to their client and miss some verbal cues that the other party is either not being completely truthful or may simply not understand the question or why it is being asked.

The ability for the trustee and the court to verify the identity of the debtors is also eliminated, therefore the debtor's attorney is responsible for verifying their client's identity. The attorney is required to verify the identity of the debtor and the debtor is required to testify under oath that they are the debtor whose name and information appears on the bankruptcy petition, schedules, and statements. This requires the debtor's attorney to meet with the client in some manner, either virtually through a video chat program or in person. This can pose a challenge for the attorney who has only been able to speak with their debtor over the phone and who has trouble using video chat programs. Anecdotally, most clients have used a video chat service similar to Zoom, Goto Meeting, Google Meets, and Facetime to name a few. Even if they only have their cameras on for a short time, it allows attorneys the opportunity to review their identity and match it to the photo ID they previously provided. This allows the attorney to confidently state that they have reviewed their identity.

Conducting meetings and hearings telephonically have the benefit of being easier for most people to use and are also much more widely available. Presumably, most people have a phone or access to a phone, but that is less true for webcams, computers, tablets or even smartphones, which would be needed for a video conferencing platform.

While many debtors do have a smartphone, this may only be good for short meetings. The smaller screen makes it much harder to follow multiple parties or documents. Additionally, debtors would need access to the required software. Luckily, most of the software used have a free version that can be downloaded and installed on the device for use in a hearing or meeting. Regardless, these limitations can make it difficult for some to properly engage in the process or participate at a hearing.

As it becomes safer to hold in-person meetings with clients, there may be a preference for many attorneys (and clients) to start holding these meetings in person again. Still, while the option to have a remote meeting with clients was available before the pandemic, it has become more widespread and

commonplace in our lives. So, for clients who may be disabled or have difficulty taking time from work to meet with an attorney the use of a video or telecommunication platform may offer a better alternative.

In any remote evidentiary proceeding, ensure all parties have access to and can use the technology necessary to participate in the remote proceeding. Courts may be required to loan equipment to litigants or establish partnerships with community partners such as libraries, schools, or other trusted organizations to provide technology and private space to participate in remote proceedings. Alternatively, they may wish to provide kiosks in private areas in the courthouse itself.

## V. The Use of Electronic Signatures

Prior to COVID-19, many bankruptcy courts would not accept pleadings for filing without original signatures, and an original signature was required on all of the debtor's schedules and statements. As a result of COVID-19, the requirement for original signatures has been temporarily waived by most courts. This was to allow attorneys to practice social distancing and avoid the need for in-person meetings.

There are many advantages of electronic signatures. They are a convenient, secure, and legally binding signature method. They do not require a debtor to be physically present and allow the individual debtor time to review and scrutinize the paperwork in the privacy of their own home. They also are recognized in a variety of industries and services we use every day. In fact, most debtors incurred the debt they are seeking to discharge by signing electronic documents.

### A. After the restrictions are lifted should courts continue to allow for electronic signatures on bankruptcy documents?

The answer is most likely a complicated one. Traditionally, signatures serve several functions in legal practice. They are used as proof that the signer authenticates the document, the debtor approves of the petition, and agrees that it should be filed. They also serve as a means of verification of a document's contents. In other words, a signed petition shows that a debtor has confirmed the information in the

petition and schedules is all correct and that they have certified and verified the information contained in the petition. This is an especially important issue particularly when it comes to the Department of Justice concerning title 28 bankruptcy crimes.

Department of Justice prosecutors are concerned that if debtors commit bankruptcy fraud by failing to disclose assets or property, income, or transfers – that they may attempt to avoid responsibility and dodge liability by denying that they signed the bankruptcy paperwork. In other words, the signature appearing on the petition is not theirs.

It is one thing to deny a signature matching your handwriting; it is another to deny an electronically generated signature where the debtor clicked on a “Sign Here” button. There are also identification issues that can occur. What if a third party, like a debtor’s spouse or friend, was the one who signed the paperwork? Prosecutors’ ability to be sure who signs a bankruptcy petition digitally can be harder to trace.

Some ways that these issues can be addressed are requiring debtor attorneys to file the digitally signed petition instead of the /s/ generated copy via ecf along with the digital tracking information provided by most secure electronic signature platforms. Additionally, courts could require the declaration concerning electronic filing to be provided with a wet ink signature on paper.

The biggest concern and issue that electronic signatures may solve is limiting the possibility of attorneys altering or changing bankruptcy schedules after they have been signed by the debtor. One can imagine the situation where a debtor’s attorney finds himself under time constraints to file a case or pleadings, usually to stop foreclosures, repossessions, or garnishments. With the chaos and time constraints that the debtor attorney may be under, it is not difficult to imagine altering a document before electronically filing it. It is not also uncommon for debtors to provide information late, after the signing, or to miraculously remember some asset or transfer after the appointment on the ride home. The use of electronic signatures would be far more convenient and allow for the debtor’s counsel to quickly get the

changes to the debtor and let them file the pleading correctly. This also avoids much of the need for bare bones or incomplete petitions.

## **VI. Client Communications**

There are several ways that technology can also improve client communication, especially in long term chapter 13 cases.

### **A. Scheduling Applications for Client Follow up**

Services like Calendly, Doodle, and SimplyBook allow sharable calendars that can be used for scheduling meetings. Links to these platforms can be included in welcome packets, on websites, or via email signature blocks. Clients can use them at their convenience or when an attorney is otherwise unavailable to answer a call. This is especially helpful in ensuring that you do not miss client call-backs and keep the lines of communication open.

### **B. Text Messaging**

With the advancement of VOIP phone systems like RingCentral, Vonage, Jive, and Dialpad, SMS messages are built in features to your phone system. Most of these applications have “do not disturb” features to help with work life balance. SMS messaging is a great way to remind clients of upcoming meetings and deadlines. Legal case management software is also starting to include SMS messaging. For example, Jubilee from Legal Pro allows an attorney or paralegal to even set up recurring or template message reminders.

While many of my clients may not read emails as frequently, they will often check their text messages much faster. Clients can also send pictures of documents via text (which is never ideal but during a pandemic we all learn to make do).

### **C. The Paperless Office**

#### **a. Digital Files, Document Portals, and Cloud-Based File Management**

Prior to the pandemic, attorneys started following the trend of using technology to set up a paperless practice. While the dream of no more filing cabinets or copy boxes requiring storage space was always tempting, it has become more and more a necessity as attorneys move out of offices and start working from home.

Going paperless requires attorneys to convert analog documents and store them in the same location as native digital documents. Using a digital scanner can make this process straightforward, albeit time consuming.

### **b. Cloud-Based File Management**

Cloud-based file storage, organization, and management and can be set up as a cheap and efficient way to store documents electronically without having to maintain your own personal file server. Some examples of these platforms include Dropbox, Box, Google Drive, Microsoft OneDrive, and iCloud. All of these platforms work on PCs or Macs and interact well with both iOS and Android devices. An added benefit of these services is that oftentimes many clients use similar services making it easier to share files and documents with your clients - especially larger files, such as mortgage or mortgage modification packets.

Most of these services have built in security features but ensuring that you have the proper firewalls and internet security become a must as soon as you move to cloud-based file management. Taking the time to consult with tech support or doing independent research is vital and could possibly save you an incredible amount of anxiety and money in the long run.<sup>2</sup>

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<sup>2</sup> [A] lawyer must take reasonable precautions in the adoption and use of cloud-based technology for client document and data storage or the creation of client-specific documents that require client confidential information. These reasonable precautions include: (1) acquiring a general understanding of how the cloud technology works; (2) reviewing the “terms of service” to which the lawyer submits when using a specific cloud-based provider just as the lawyer should do when choosing and supervising other types of service providers; (3) learning what protections already exist within the technology for data security; (4) determining whether additional steps, including but not limited to the encryption of client confidential information, should be taken before submitting that client information to a cloud-based



## VII. Ethical Considerations

Attorneys must adapt to changing technologies and the COVID-19 pandemic has made this more and more clear. Looking to the Model Rules of Professional Conduct. Under rules 1.1, 1.3, and 1.4 address lawyers' core ethical duties of competence, diligence, and communication with their clients.

Furthermore comment [8] to Model Rule 1.1 further explains that:

“To maintain the requisite knowledge and skill [to be competent], a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.” (Emphasis added).

So not only are lawyers required to ensure competence with the law, but we must also be competent with the technology necessary to provide diligent communication with our clients. Especially while we are practicing virtually.

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system; (5) remaining alert as to whether a particular cloud-based provider is known to be deficient in its data security measures or is or has been unusually vulnerable to “hacking” of stored information; and (6) training for lawyers and staff regarding appropriate protections and considerations. These precautions do not require lawyers to become experts in technology; however, they do require lawyers to become and remain vigilant about data security issues from the outset of using a particular technology in connection with client confidential information. The Professional Ethics Committee for The State Bar of Texas Opinion No. 680 September 2018.

## Appendix A

### **Texas Bankruptcy Court's Notices and Orders in response to COVID-19 (Excerpt from Thomson Reuters Report: Bankruptcy Courts Update: Impact of COVID-19)**

#### **Eastern District of Texas**

- A general order regarding alterations to court operations under exigent circumstances arising from COVID-19 pandemic, including that hearings on pending contested matters must be conducted by video conferencing or telephonic means at the discretion of the particular judge; adversary trials and extended contested matters must be handled on a case-by-case basis (May 15, 2020).
- A notice of electronic filing and online payment options (April 17, 2020).
- A notice regarding new electronic filing feature for non-attorney filers (April 1, 2020).
- A general order regarding alterations to court operations under exigent circumstances arising from COVID-19 pandemic, rescheduling all hearings and trials for a date after May 15, 2020, subject to certain exceptions and extending certain deadlines imposed by the Bankruptcy Code (March 23, 2020).
- A notice continuing all in-person section 341 meetings scheduled through April 10, 2020 (March 19, 2020).
- The clerk's notice of alternative means to access bankruptcy court services in response to COVID-19, using the ECF system, email, mail, and phone (March 17, 2020).

#### **Northern District of Texas**

- A general order regarding adjustment of plan payments in Chapter 13 cases as a result of forbearance agreements and related provisions regarding the conduit program (May 6, 2020).
- A general order regarding continued court operations during the COVID-19 pandemic, extending the March 16, 2020 general order, including that, with certain exceptions, court hearings during the month of May will generally be conducted by either videoconference or telephonically; live hearings will be held on rare occasions, requiring a motion by a party; for motions to extend or impose the automatic stay, debtor's counsel must submit bridge orders after the objection deadline has passed, which the court will in most cases sign and set/reset them for hearing after June 1, 2020, but if there are objections the court may decline to issue a bridge order and set a hearing before June 1, 2020; and judges will handle adversary trials and lengthy contested matters on a situation by situation basis (April 20, 2020).
- A general order temporarily suspending wet signature requirement until June 1, 2020, unless further extended by the court (April 20, 2020).
- A clerk's notice with tips for participating in bankruptcy court conferences by teleconference (April 16, 2020).
- A clerk's notice providing trustee telephonic information for section 341 meetings (April 10, 2020).
- A general order temporarily suspending wet signature requirement until May 1, 2020, unless further extended by the court (March 25, 2020).
- A notice continuing all in-person section 341 meetings scheduled through April 10, 2020 (March 18, 2020).
- Updates to telephonic appearance policies (March 16, 2020).

- A general order regarding court operations under exigent circumstances created by the COVID-19 pandemic, rescheduling all hearings and trials for a date after May 1, 2020, subject to certain exceptions and memo on Judge Jones's procedures (March 16, 2020).

### **Southern District of Texas**

#### **COVID-19 General Orders:**

- A general order extending the March 24, 2020 general order and the March 26, 2020 general order invoking the emergency protocol for all divisions within the S.D. Tex. through May 31, 2020, subject to certain modifications (April 27, 2020).
- An amended general order invoking emergency protocol for all divisions within the S.D. Tex. as set out in the March 9, 2020 general order (March 26, 2020).
- A general order invoking emergency protocol for Brownsville, Galveston, and Houston divisions, as set out in the March 9, 2020 general order (March 24, 2020).
- A general order temporarily authorizing in person meetings by alternative means for attorneys seeking approval of a fixed fee, for cases that are filed between March 23, 2020 and May 31, 2020; preference should be given to a video conference alternative versus an audio conference alternative (March 24, 2020).
- An general order authorizing electronic signatures, from March 19, 2020 through May 31, 2020 (March 19, 2020).
- A general order establishing procedures for temporary reduction in Chapter 13 plan payments, from March 1, 2020 through May 31, 2020 (March 19, 2020).
- A general order continuing all in-person section 341 meetings scheduled through April 10, 2020 (March 16, 2020).
- A general order implementing alternative procedures for conducting Chapter 13 panel hearings (March 16, 2020).
- A general order adopting contingency plan to address possible public health limitations on court operations (March 9, 2020).

#### **COVID-19 Special Orders:**

- Brownsville Division special orders and notice of courthouse closure.
- Corpus Christ/Victoria Division special orders and notice of courthouse closure (Victoria Division).
- Houston/Galveston Division special orders, Houston and Galveston notices of courthouse closures.
- Laredo Division special orders and notice of courthouse closure.
- McAllen Division special orders and notice of courthouse closure.

### **Western District of Texas**

- A notice that hearings before Judge Gargotta will continue to be held telephonically until further notice, including those previously noticed as live hearings (May 4, 2020).
- A notice from the US Trustee with instructions for appearing at telephonic section 341 meetings (April 6, 2020).
- An interim standing order regarding authorizing electronic signatures, effective March 23, 2020 (March 23, 2020).

- An interim standing order regarding bankruptcy filing procedures for parties not represented by an attorney, allowing pro se parties to file petitions and other documents by US mail, email, or fax, effective March 23, 2020 until further order of the court (March 23, 2020).
- An interim standing order regarding Chapter 13 confirmation hearings, extending the time in which a hearing must be held under section 1324(b) of the Bankruptcy Code from 45 days to 60 days after the conclusion of the section 341 meeting, unless the court orders otherwise (March 23, 2020).
- A notice to Chapter 13 debtors impacted by the COVID-19 pandemic, stating that they may request a one-time moratorium on plan payments not to exceed 60 days (March 23, 2020).

Global reference website: <https://www.uscourts.gov/about-federal-courts/court-website-links/court-orders-and-updates-during-covid19-pandemic#bankruptcy>.

Bankruptcy Courts Update: Impact of COVID-19, THOMSON REUTERS, Impact of COVID-19 by Practical Law Bankruptcy & Restructuring, [https://ca.practicallaw.thomsonreuters.com/w-024-5781?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://ca.practicallaw.thomsonreuters.com/w-024-5781?transitionType=Default&contextData=(sc.Default)&firstPage=true), (last visited March 25, 2021).

## CHAPTER 13 CHECKLIST

Check if filed/provided:

<b><u>UPON CASE BEING FILED:</u></b>
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**Pay Order:**

- Pay Order request submitted along with petition.
- If self-employed debtor, register for TFS payments at tfsbillpay.com or submit cashier's check.
- Ensure debtor understands payment date and obligation.

**Proof that debtor has attended pre-petition credit counseling session:**

- Credit counseling certification
- Debt repayment plan, if developed

**DSO Information:**

- Domestic Support Obligation disclosure statement with last known address and phone numbers included.

**Mortgage exhibits:**

- Exhibit 1 if ongoing mortgage to be paid direct by debtor
- Exhibits 2 and 3 if ongoing mortgage to be paid by Trustee

**Bankruptcy documents:**

- Plan of Reorganization
  - *Note: Please use correct Plan form.*
  - *Note: Debtor is responsible for serving copies of the Plan.*

**Disclosure of income and expenses:**

- Form 122C Means Testing Form
- Copy of pay stubs/pay advices for past 60 days, or affidavit for self-employed debtors
- Proof of income from all other sources
- Schedules
- Statement of Financial Affairs
- Information re: increase/decrease pay/income anticipated in next year (located at bottom of Schedule I)

<b><u>NO LATER THAN 7 DAYS PRIOR TO SECTION 341 CREDITOR'S MEETING:</u></b>
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**Tax return documents:**

- Tax return for most recent tax year
- Proof that debtors have filed tax returns for past four (4) years, via certification at confirmation.  
*(Note: Please do not send the Trustee the four years of tax returns.)*

**Mortgage documents:**

- Proof of lien perfection of mortgage lien(s).
- Last mortgage statement received by debtor(s).

**Expense documents:**

- Any documents in support of high expenses or non-filing spouse expenses included on Schedule J.

# Checklist for Dialing In to 341 Meetings

- Use Trustee Teleconference Line on the Meeting of Creditors (Form 309A)
- Each client (debtor and debtor 2) and attorney should dial in separately
- Do not use speakerphone
- If you are using your cell phone, you may need to use ear buds or a head set to minimize feedback and background noise
- Answer loudly and clearly into the microphone for the best audio recording
- Do not interrupt other speakers so that the recording is clear
- When entering the conference line, keep line on mute until case is called and it is your turn to speak to minimize background noise
- The meeting of creditors will require your client to have reviewed the bankruptcy petition, schedules, and statements on file
- If you need a recording of the 341 meeting, contact your local United States Trustee's office with the date and time of the meeting held

# Checklist for Accessing Remote Hearings

- To access the courtroom, use the procedures outlined in the court's order setting hearing.

Southern District of Texas: [Bankruptcy Judges' Procedures \(& Schedules\) | Southern District of Texas \(uscourts.gov\)](#)

Northern District of Texas: [Clerk's Notice 20-04 \(Participating In Bankruptcy Court Hearings By Videoconference\) | Northern District of Texas | United States Bankruptcy Court \(uscourts.gov\)](#)

Eastern District of Texas: J. Rhoades: [VIDEO HEARINGS WITH MICROSOFT TEAMS.pdf \(uscourts.gov\)](#) J. Searcy: [N:\TEAMS Video\Virtual Hearings Teams.wpd \(uscourts.gov\)](#)

Western District of Texas: [Using Cisco WebEx for Federal Court Proceedings | Western District of Texas | United States Bankruptcy Court \(uscourts.gov\)](#)

- If dialing in for audio, each client (debtor and debtor 2) and attorney should dial in separately
- Do not use speakerphone
- If you are using your cell phone, you may need to use a head set to minimize feedback
- When entering the virtual courtroom, you should keep your line on mute and your camera off until your case is called
- Speak slowly and clearly. Remember to turn your phone off of mute when it is your turn to speak.
- If you are appearing on video, you should make sure that your background is neutral or free from clutter, and that you are in a good light source, and centered in the frame
- If you are the attorney appearing at the hearing: Circulate a copy of the exhibit and witness list to all parties in interest in accordance with the local rules, and have a copy of the exhibit and witness list on your screen if you need to present
- If you are a witness, you should not text or communicate with other parties while you are sworn in and on the stand