


The order below is hereby signed.

Signed: October 1 2021




Elizabeth L. Gunn
U.S. Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF COLUMBIA**

In re:

Order on Hearings

General Order No. 2021-05

ORDER ESTABLISHING HEARING PROTOCOLS BEFORE JUDGE GUNN

Since the beginning of the COVID-19 pandemic, the United States Bankruptcy Court for the District of Columbia has remained open and operating, with adjustments based on local health and safety concerns relating to the pandemic. During this time, access to the E. Barrett Prettyman United States Courthouse and the William B. Bryan Annex (the “Courthouse”) has been restricted to judges, staff, and those with official business before the courts. While in-person proceedings in the Courthouse were initially suspended at the beginning of the pandemic, in-person proceedings resumed as necessary in September 2020 for District Court cases. All hearings before Judge Gunn since her appointment have been held electronically, exclusively by Zoom since late September 2020. However, consistent with the orders of Chief Judge Beryl Howell of the U.S. District Court for the District of Columbia, and given the nature of the Bankruptcy Court docket, it is now appropriate to establish procedures for hearings before Judge Gunn, including in-person proceedings. Therefore, effective immediately, and continuing until further Order of the Court, the following procedures apply:

Hearing Scheduling

1. Unless otherwise ordered by the Court, the first scheduled hearing on any matter, whether in a main case or adversary proceeding and regardless of chapter, will proceed via Zoom for Government. When setting a hearing utilizing the Court's self-scheduling procedures and available dates on the Court's website, parties should clearly include in their notice that the hearing shall be heard virtually via Zoom for Government.

2. At any virtual hearing, the Court may, as appropriate, and based upon the facts and circumstances of the case:

- a. Hear the matter, and grant or deny the relief requested.
- b. Continue the hearing to another virtual hearing date and time, a further virtual preliminary hearing, or a virtual final hearing.
- c. Continue the hearing to an in-person hearing. Absent extraordinary circumstances, all hearings requiring substantial witness testimony and/or the introduction of substantial evidence shall be set for an in-person hearing. Evidentiary hearings that will progress solely by witness proffers may be held virtually.

3. Notwithstanding ¶¶ 1-2, any party may contact Judge Gunn's Courtroom Deputy and request that any hearing be held in-person. In so making the request, the party should have already discussed the matter with the opposing party and be able to inform the Courtroom Deputy if the parties are in agreement on the request for an in-person hearing. If there is not agreement between the parties, the Court will hold a virtual preliminary hearing for scheduling purposes. If it is apparent that the parties will need to present substantial witness testimony or substantial evidence at the hearing, parties are encouraged to request an initial in-person hearing. The Courtroom Deputy will provide the parties with the date and time of the in-person hearing to be

noticed. Any notice of an in-person hearing shall clearly and conspicuously state that the hearing will be held in-person in Courtroom 1 or another Courtroom, as necessary.¹

In Person Hearings

4. Parties appearing for in-person hearings must comply with all applicable orders entered by United States District Court Chief Judge Howell and any posted requirements regarding court operations, including but not limited to COVID-19 Courthouse Health and Safety Protocols, mask mandates, and social distancing requirements in the Courthouse. The Court will follow all Health and Safety Protocols as outlined in the Court’s Continuity of Operations Plan (the “COOP”).²

5. As of the date of entry of this General Order, Judge Gunn’s Courtroom is not equipped to conduct hybrid in-person/Zoom hearings. The Court expects that a hybrid option will be available in the future and/or may be facilitated by use of another courtroom in the Courthouse. Requests for hybrid hearings will be taken on a case-by-case basis at either (i) the initial virtual hearing, or (ii) upon written motion.

6. Until such time as Judge Gunn’s Courtroom is equipped for video hearings, requests to observe, but not participate in, an in-person hearing by telephone will be handled on a case by case basis upon either (i) request to the Courtroom Deputy or (ii) written motion.

¹ Additionally, all notices need no longer include a statement that the party filing an objection is required to include a proposed order as part of their objection. Said requirement has been superseded by General Order 2020-10.

² The combined District and Bankruptcy Court have developed a comprehensive plan for conducting trials that prioritizes the health and safety of all trial participants, courthouse staff, and those working in the courthouse. Details of that plan are available in Appendix 8 to the Continuity of Operations Plan, available at <https://www.dcd.uscourts.gov/continuity-operations-plan-covid-19-pandemic> (last visited September 30, 2021).

Other Hearing Requirements

7. Unless otherwise instructed by the Court prior to the virtual hearing, all counsel and parties participating in a virtual hearing shall appear by video. Telephonic/voice only appearances must be approved prior to the hearing and may be requested by contacting the Courtroom Deputy.³ In addition, all parties participating in a virtual before Judge Gunn should review and be familiar with the “Virtual Hearing Expectations,” attached hereto as an Exhibit.

8. Unless otherwise specifically requested in a motion for relief from stay and approved by the Court, the initial hearing on a motion for relief from stay shall be treated as a preliminary hearing. Nothing herein shall restrict the Court from granting the relief requested at the initial hearing.

9. In all non-individual debtor cases, the debtor designee and/or a principal of the debtor shall appear for all status conferences and dispositive hearings unless otherwise excused by the Court prior to the scheduled hearing. In all individual debtor cases, the debtor(s) shall appear at all dispositive hearings unless otherwise excused by the Court prior to the scheduled hearing.

Continuances and Settlements

10. If parties reach an agreement to resolve or continue a matter by consent, they must by not later than 4:00 p.m. ET the day prior to the hearing: (i) file a written notice of the agreed continued hearing date, or (ii) contact the Courtroom Deputy or Chambers to request the hearing be removed from the docket. A hearing will not be removed until the Court, Courtroom Deputy, or Chambers affirmatively confirm the same. If a hearing is not timely removed or continued, the Court will hold the scheduled hearing on the matter.

³ The Court recognizes the nature of last-minute technical problems at hearings and non-video appearances will be liberally granted as a result thereof. However, parties should not rely upon telephonic appearances as a regular option.

11. A proposed order resolving a matter or granting relief on an uncontested motion may be tendered to the Court prior to a scheduled hearing. The Court may enter the proposed order prior to the hearing provided any objection deadline has passed and the Court, upon its own assessment, determines that the order is otherwise appropriate. Notwithstanding the submission of a proposed order, a noticed hearing will proceed unless (i) an order resolving a matter is docketed prior to the hearing; (ii) the parties are excused by the Courtroom Deputy; or (iii) the parties are excused by Chambers.

[Signed and dated above.]

Exhibit

Guidelines for Remote Hearings Before Judge Gunn

These guidelines apply and must be followed in any virtual hearing conducted before the United States Bankruptcy Court for the District of Columbia. The Court's "Virtual Courtroom" while conducted in Zoom for Government is, nevertheless, a federal courtroom, and all counsel and parties should govern themselves in the manner they would in the physical courthouse. Parties are encouraged and invited to (i) request a session with the Courtroom Deputy to test their technology and/or (ii) log into the Court's virtual courtroom up to 15 minutes prior to the *first* scheduled hearing of the day to test their connections and technology.

The broadcasting, televising, recording, or photographing of Court proceedings is strictly prohibited except as specifically authorized by the Court regardless of whether such proceedings are conducted in the physical courtroom, virtual courtroom, or remotely.

Virtual Hearing – Technical Requirements

- 1) Manner of Connecting.
 - a. All parties are encouraged to use a computer and wired internet or wireless internet connection to connect to the virtual courtroom. However, parties may use tablets or phones to connect to the virtual courtroom. Parties connecting to the virtual courtroom do so at their own risk if their connection becomes unstable. Cellular service connections, in particular, can become unexpectedly unstable. The Court encourages parties, to the extent possible, not to rely on cellular service and connect to virtual hearings through a computer, wireless internet, or a landline phone.
 - b. Nothing herein shall prohibit any party from connecting to the virtual courtroom with more than one device, provided however that doing so does not result in an echo or any other technological issues.
- 2) Video.
 - a. All parties must appear by video from a quiet location and have, at a minimum, their head and shoulders visible in the video feed. Multiple parties (i.e. attorney and client, co-debtors, etc.) may utilize the same connection and video feed as long as the Court can see each party's head and shoulders at all times.
 - i. No party may appear by video from a moving vehicle. Appearance in the virtual courtroom from parked/stopped vehicles is highly discouraged.
 - ii. Absent extraordinary circumstances, parties should remain stationary while appearing in the virtual courtroom (i.e. not walking or otherwise moving around their location).
 - b. Parties shall ensure that the name visible with their video feed is appropriate. Parties are encouraged to use their full name(s) as it assists the Court, Courtroom Deputy, and court reporters. Upon request prior to calling court into session, the Courtroom Deputy can assist parties with changing their name(s). Video feeds with multiple

parties may include all names or just one name of one of the parties included in the feed.¹

- c. A party's video feed should remain active at all times during the hearing in which the party is participating. However, a party may briefly turn off their video to avoid visual distractions if they are not actively speaking to the Court. Parties observing a hearing (but not participating therein) or waiting for their hearing to be called may turn off their video until their hearing is called. All images visible when a video feed is inactive must be appropriate.
 - d. Parties may use appropriate virtual backgrounds or blur filters except when more than one person is appearing in the same video feed at the same time. No other filters are permitted. When more than one party is in a video feed, all virtual backgrounds and filters must be disabled so as to avoid one party not being visible at all times.
- 3) Audio.
- a. Parties may use either audio option available by Zoom: 1) connection through their computer/tablet/phone, or 2) dialing in from a separate phone (i.e. a second, separate device than their video feed). Parties should confirm that the microphone associated with their device is sufficient to allow all parties in the virtual courtroom to hear them.
 - b. Parties may use headphones to minimize background noise and/or echo in the virtual courtroom.
 - c. Parties should be familiar with the mute function of their device prior to their hearing. In order to maintain a clear record, parties should keep their microphone on mute until their matter(s) is called and at all points during their hearing(s) unless actively speaking. The Court will provide time for parties to unmute and recognizes that objections or other interjections may be slightly delayed compared to an in-person proceeding due to the need to unmute. Parties observing or waiting in the virtual courtroom for their virtual hearing shall keep their devices on mute at all times.
 - d. The Court reserves the right to mute any person at any time during a hearing if they are not complying with these requirements. If the Court mutes a party appearing by telephone, the party must use *6 to unmute themselves.
 - e. While occasional environmental background noises are a recognized part of virtual hearings, parties should do their best to minimize background noise(s) to the extent possible.

¹ The Court encourages all parties to follow all CDC guidance, to use safe social distancing, and other necessary protocols to avoid the spread of COVID-19. Parties utilizing the same video feed are expected to comply with any and all regulations regarding COVID-19 for the location from which they are appearing. Nothing herein shall be construed to override or provide an exception to any applicable COVID-19 regulations or protocols.

4) Screen Share/Documents.

- a. Parties should be familiar with the screen share function of their device(s) in Zoom prior to the hearing, paying specific attention to the ability to share one program (i.e., Adobe Acrobat) versus sharing an entire desktop. The party sharing their screen shall ensure that only the website/document being shared is visible and that all other tabs are closed. All parties seeking to use documents during a virtual hearing shall have electronic versions of the documents open and readily available for use. The Court will not allow a document to be shared by holding a physical copy up to the video feed. All content shared by a party as an exhibit or visible on a party's desktop while sharing an exhibit must be appropriate
- b. Unless otherwise instructed by the Court prior to the virtual hearing, all exhibits, redacted as required by Federal Rule of Bankruptcy Procedure 9037, must be filed electronically prior to the virtual hearing. If an unredacted version of a document containing P.I.I. is required for the virtual hearing, counsel must email the unredacted version to either Judge Gunn's Courtroom Deputy or Gunn_Chambers@dcb.uscourts.gov. Counsel and parties are encouraged to share copies of electronic documents not otherwise filed as exhibits *prior* to the virtual hearing. A rebuttal exhibit may be shared without prior electronic filing provided that, if admitted, it is uploaded to the docket promptly upon conclusion of the hearing.
- c. Parties must request approval before beginning to share their screen. In the event of delays or other issues with screen share by a party, the Court reserves the right to control and run the screen share function.
- d. Because screen sharing results in smaller video windows of the parties in Zoom, when a document or other screen share is no longer required to be viewed, the screen share should be deactivated so the Court may return to a full-sized video feed.

5) Witnesses.

- a. In accordance with Federal Rule of Civil Procedure 43(a) (made applicable by Federal Rule of Bankruptcy Procedure 9017) and Federal Rule of Evidence 611, for good cause and in compelling circumstances, a witness may be permitted to testify by contemporaneous transmission from a location other than the courtroom. Any witness called to testify or subject to cross-examination during a virtual hearing shall be permitted to testify by contemporaneous transmission from a different location ("Remote Witness").
- b. All Remote Witnesses shall be affirmed over video, and such testimony will have the same effect and be binding upon the Remote Witness in the same manner as if such Remote Witness was affirmed by the Courtroom Deputy in person in open court.
- c. Each Remote Witness shall comply with the requirements set forth herein for Video and Audio. A Remote Witness and counsel may appear in the same video feed, subject to the Video and Audio requirements set forth herein. However, an

opposing party may move for the Court to order separate video feeds to be established for the Remote Witness and counsel.

- d. The Remote Witness may not communicate with any other person regarding the subject of the testimony, by electronic means or otherwise, during the hearing. If the Remote Witness or counsel seek to communicate with one another, either shall openly request a recess for such purpose. If such request is granted by the Court, the Remote Witness and counsel may privately confer offline or in a Zoom breakout room.
 - e. The party sponsoring a Remote Witness shall ensure that the witness has either (i) printed or (ii) readily accessible and reviewable electronic copies of all exhibits filed with the Court by all counsel prior to the start of the virtual hearing.
- 6) Virtual Appearances.
- a. Parties should prepare for video hearings just as they would for in person hearings.
 - b. Parties should conduct themselves professionally and dress appropriately. If travelling, please have court appropriate attire available for use. The Court understands that the virtual practice of law is in some ways different from appearing in the Courthouse. However, virtual hearings have been the “norm” for more than a year and the Court expects that more than sufficient time has passed to overcome the initial technological and other “growing pains” associated from the shift to virtual hearings. In other words, at this point virtual hearings will be a regular part of the practice in this Court and parties should ensure that they have technology and familiarity with Zoom and its functions sufficient to effectively participate in a virtual practice.
 - c. Parties should not wear a mask when addressing the Court.² Parties and counsel should advise witnesses of the same requirement. If personal health or safety is a concern for any party, arrangements should be made prior to the virtual hearing such that each party may participate from a separate location. The Court recognizes there may be extraordinary circumstances when appearing in separate locations is not possible and/or mask wearing is necessary and unavoidable given the location of a party. However, parties should not rely upon this option on a regular basis and, if multiple appearances will be necessary over the course of a case, work to facilitate attendance in separate locations where mask wearing is not necessary.
 - d. The virtual courtroom is a federal courtroom. No party should be eating or smoking on video while Court is in session.

² The Court encourages all parties to follow all CDC guidance, to use safe social distancing, and other necessary protocols to avoid the spread of COVID-19. Parties utilizing the same video feed are expected to comply with any and all regulations regarding COVID-19 for the location from which they are appearing. Nothing herein shall be construed to override or provide an exception to any applicable COVID-19 regulations or protocols.

7) Technological Emergencies.

The Court recognizes that technological emergencies may happen during a virtual hearing including, but not limited to, loss of internet, loss of power, and computer problems. All parties should have the ability to telephone Judge Gunn's main chambers line immediately upon a technological emergency. Chambers will alert the Judge and work to troubleshoot or otherwise reschedule any hearing. Loss of cellular signal when attending solely by cell phone, absent something further, shall not constitute a technological emergency.