

BANKRUPTCY LAW SECTION

By Jeffrey R. Waxman, Esquire, Chair; Joseph Michael Barry, Esquire, Vice Chair; and Erin R. Fay, Esquire, Secretary*

The novel coronavirus (or COVID-19) pandemic has become a global issue affecting each of us personally and professionally. The pandemic has affected virtually every court — federal and state — in Delaware and elsewhere around the country. Like other courts, the Delaware Bankruptcy Court and the practitioners appearing before it have had to adjust. Even as this is written on April 10, 2020, those changes and practices continue to evolve.

The Local Rules of Bankruptcy Procedure

By way of background, the Delaware Local Bankruptcy Rules provide for procedures that include filing an agenda and delivering pleadings to the Court two days prior to a hearing. Hearings under the Local Rules are generally in-person, although non-local parties are permitted to attend hearings telephonically using CourtCall. In most cases, parties arguing a motion are not permitted to appear telephonically, but are required to attend a hearing in person. Other than in rare exceptions, all evidentiary hearings and trials require directly participating counsel and all witnesses to be physically present in the Courtroom.

Changes Since March 12

On March 12, 2020, the United States District Court and the Bankruptcy Court issued a joint announcement that the Courts were monitoring the outbreak of COVID-19. Among other things, the Courts advised that they were encouraging employees and practitioners to telework. The Courts also announced that they would conduct conferences and hearings telephonically when it is practicable and efficient to do so and would promptly consider any request to change a conference or hearing from being held in-person to via telephone. A day later, the Bankruptcy Court issued an interim order stating that, effective March 16, the Bankruptcy Court would no longer accept hand delivery of any documents, and modified the chambers procedures to provide for the delivery of documents electronically, including that all agendas for hearings include hyperlinks to docketed pleadings.

On March 16, the Bankruptcy Court issued a general order that all hearings, status conferences, trials, and any other matters scheduled to be held in open court that are not deemed time-sensitive by the presiding judge would be continued until a date to be determined on or after April 15, 2020. All hearings held prior to April 15, 2020, were to be telephonic and/or by videoconference, unless otherwise determined by the presiding judge. That order was subsequently amended to extend the continuance of all non-time-sensitive matters through May 1, 2020.

The Bankruptcy Court has also entered orders closing its intake counter (although the drop box in the lobby of the Bankruptcy Court building remains available), and suspending the requirement that counsel obtain original signatures from debtors.

The Bankruptcy Court's orders have also affected the Court's consumer docket, as the intake is closed, thereby

requiring that *pro se* parties file pleadings electronically. Hearings to consider confirmation of Chapter 13 plans and other hearings in Chapter 13 cases are also being heard telephonically.

Open Communications From and With the Court

The Bankruptcy Court has been very transparent with all of the practitioners. Among other things, the Bankruptcy Court has promptly issued orders, which are available on its website, and has requested that each of those orders be distributed by the listservs of the DSBA's Bankruptcy Section and the Federal Bar Association. On March 16, the Bankruptcy Court held a teleconference for paralegals and attorneys to provide guidance and address any questions on how to handle the new policies and operations. The Bankruptcy Court also held its regularly scheduled bench and bar on April 21 by Zoom to give the Bankruptcy Court an opportunity to provide practitioners with an update, and for practitioners to raise issues or ask questions of the Bankruptcy Court.

The Bankruptcy Court's Preparedness

The Delaware Bankruptcy Court was extraordinarily prepared for this sort of crisis. Over the last several years, the Bankruptcy Court's technology was prepared for video hearings (a change that was welcome from the nascent days of cross-border cases that required hearings jointly conducted in real-time with courts in other countries). Further, the Bankruptcy Court's employees were issued computers by the Bankruptcy Court to enable them to work remotely. That does not mean that everything can be done remotely, as a few employees need to appear at the Bankruptcy Court once or twice a week in order to pick up certain items that cannot be checked remotely. But from our perspective, the Bankruptcy Court (including staff) has done very well under these unprecedented circumstances.

Looking Ahead

We are now in a period when hearings are being conducted telephonically or by video through either Zoom or Skype. At least one Bankruptcy Judge has established a procedure for "first day" hearings by which blacklines of orders must be sent to the Court at least an hour prior to the hearing, with a clean copy of all orders to be uploaded prior to the hearing. This is, at least for now, the new normal.

But even during what we hope is the worst of times, it has been refreshing to witness the collegiality of the Delaware Bankruptcy Bar (and of our colleagues elsewhere) at its finest. To be certain, the bankruptcy process is inherently adversarial; the parties are all fighting for their piece of the same pie. As the Bankruptcy Court's and the parties' resources have been curtailed during this process, everyone is working together to move expedited matters forward while pressing pause on less critical issues. 🍷

* Thanks to Chief Bankruptcy Judge Sontchi for his assistance.