

****NOTE NEW TELEPHONE/ZOOM NUMBER****

**SECOND AMENDED Notice Regarding Proceedings
Before the Honorable Mitchell L. Herren ---COVID-19 Protocol**

The following procedures are effective until further notice.

1. **Dockets.** All motion, confirmation, stay-relief, and miscellaneous dockets for all Chapters may be attended in person or virtually via telephone (see instructions below).
2. **Status, Scheduling, and Pretrial Conferences.** Until further notice these will be conducted via Zoom audio conference (see instructions below).
3. **Zoom Proceedings for Dockets, Status, Scheduling, and Pretrial Conferences.**
 - a. **Participants.** The Court will use Zoom for Government. The link or dial-in information below can be used for regular dockets or non-evidentiary proceedings only. *For evidentiary hearings and trials and oral arguments a different link will be provided to participants. See Paragraph 5 below.*

<https://www.zoomgov.com/j/1609955830?pwd=MDlMMmM2eTR2dnY5NGxzZlFCUlhJdz09>

or

Dial: 551 285 1373 or 646 828 7666

Meeting ID: 160 995 5830

Passcode: 099541

- b. **Attendance at the Zoom audio proceedings.** All participants in the Zoom audio proceeding shall identify themselves if requested by the Court and prior to each time they speak (for a clear electronic record). Participants should MUTE their phone until their case is called or until they are addressing the Court. Avoid using speaker phone, Bluetooth, and other hands-free features when addressing the Court, as these features can cause interference. Do NOT place your phone on HOLD, as this may cause background music to be played, which interferes with the telephonic record. **RECORDING OF PROCEEDINGS IN ANY MANNER IS PROHIBITED.**

4. Trials, Evidentiary Hearings and Oral Arguments. Trials, evidentiary hearings and oral arguments will usually be conducted IN PERSON at the Courthouse. Anyone wanting to appear or attend virtually should seek prior Court approval through the Clerk's Office or Judge Herren's chambers.

5. Zoom Proceedings for Evidentiary Hearings, Trials and Oral Arguments.

For these, the Court may at times allow the use of Zoom for Government (for audio and video purposes) in lieu of in-person appearances. The Zoom link shall be provided by the Court to the list of persons identified by the parties as Zoom participants in accordance with subparagraph (a) below, and to any other participants who provide notice to the Court in accordance with subparagraph (b) below. All counsel who participate via Zoom shall participate in appropriate testing of Zoom prior to the virtual hearing or trial as may be requested by Court personnel. **RECORDING OF PROCEEDINGS IN ANY MANNER IS PROHIBITED.**

a. Prior Notice of Intent to Participate in Evidentiary Hearing or Oral Argument Via Zoom.

If virtual appearance/attendance is approved by the Court, by no later than ***three (3) business days prior to the scheduled hearing/trial date***, counsel for the parties and any unrepresented party shall provide the Court at [Annette Albright@ksb.uscourts.gov](mailto:Annette.Albright@ksb.uscourts.gov), [Misse Swiggart@ksb.uscourts.gov](mailto:Misse.Swiggart@ksb.uscourts.gov) and [Marnie Bourbonnais@ksb.uscourts.gov](mailto:Marnie.Bourbonnais@ksb.uscourts.gov) a list of all (1) *attorneys* and *unrepresented parties*, including the person's first and last names, affiliation, party represented (in the case of attorneys), telephone number and email address, and (2) *witnesses* (including first and last names, title(s), affiliation, phone number and email address) who will be participating in the virtual proceeding via Zoom. Prior to the proceeding the Court will circulate the Zoom link to such participants by email. When emailing the Court please identify the specific case and Zoom hearing you are emailing about in the subject line.

b. Attendance at the Virtual Proceeding by Others. All who wish to hear or observe a virtual proceeding shall send an email requesting permission to attend to [Annette Albright@ksb.uscourts.gov](mailto:Annette.Albright@ksb.uscourts.gov), [Misse Swiggart@ksb.uscourts.gov](mailto:Misse.Swiggart@ksb.uscourts.gov) and [Marnie Bourbonnais@ksb.uscourts.gov](mailto:Marnie.Bourbonnais@ksb.uscourts.gov) no later than ***three (3) business days prior to the scheduled hearing/trial date***. If you are connecting to the virtual proceeding by telephone, you must provide the Court with the telephone number that will be used to connect, the first and last names of each person who will connect, and such person's interest in the proceeding. Prior to the proceeding, the Court will circulate the Zoom link to those who

wish to hear or observe the proceeding. Persons who are only listening or observing the virtual proceeding must keep their telephone or microphone muted at all times unless they are addressed by the Court. **RECORDING OF PROCEEDINGS IN ANY MANNER IS PROHIBITED.**

c. Remote Witness Testimony. Any witness called to testify at a virtual proceeding shall testify by contemporaneous transmission from a different location than the courtroom (the “Remote Witness”). All Remote Witnesses shall be sworn in over Zoom, and such testimony will have the same effect as if the Remote Witness were sworn in person in open court at the courthouse. In the event of an error or malfunction with Zoom, the Remote Witness may be sworn in and testify via the dial-in number included in the Zoom invitation. The party offering the Remote Witness shall be responsible for ensuring that the Zoom link, and all exhibits from all parties are supplied to the Remote Witness in hard copy prior to, or in the case of impeachment exhibits, at the virtual evidentiary proceeding. No person other than counsel may be present in the room from which the Remote Witness will testify during the testimony of the Remote Witness. When counsel is questioning a Remote Witness, both the Remote Witness and the counsel must be visible to the Court and other counsel. Best practice is for counsel and Remote Witnesses, as well as parties, to have separate Zoom cameras. While the Remote Witness is testifying, unless permission has been given by the Court, the Remote Witness may not have in the room any paper or electronic documents except his or her declaration submitted in lieu of direct testimony and all exhibits from all parties submitted to the Court pursuant to subparagraph (c) above.

d. Checking in for Zoom Proceeding. Based on the number of participants in the Zoom proceeding, and the Court’s security requirements for participating in a Zoom for Government audio and video hearing or trial, all participants seeking to join the virtual evidentiary proceeding should connect to the hearing or trial 30 minutes before the scheduled start time. When participants sign in to Zoom for Government and add their names, they must type in the first and last name that will be used to identify them at the proceeding. Participants who type in only their first name, a nickname or initials will not be admitted into the virtual hearing or trial.

e. Protocol. Participants should mute their phones when not addressing the Court to prevent background noise, which is distracting to participants and interferes with the record. Participants should, where possible, avoid speaker phone, Bluetooth, and other hands-free features when addressing the Court, as these features can cause interference.

6. Exhibits (In-person and Zoom proceedings)

a. Submission of Exhibits. No later than three (3) full business days before trial, all parties shall submit to the clerk's office via e-mail at KSBWichita_Exhibits@ksb.uscourts.gov or deliver a flash drive (subject to redaction of personal information) of all proposed exhibits in PDF format. Each PDF document may contain up to fifty (50) exhibits, with each individual exhibit marked per LBR 9072.1, bookmarked if possible, and paginated to ensure easy navigation. The first page of the PDF file shall be the Exhibit Sheet that accompanies the trial reminder letter and is used to track offering, objections, and admission of exhibits. One paper set of exhibits shall also be delivered to the clerk's office, tabbed, paginated, and in notebooks for witness use at any live hearing and as a file copy.

A complete set of exhibits shall also be delivered by each party to opposing counsel, unrepresented parties, and if applicable, any witness scheduled to appear remotely. Exhibits provided to remotely appearing witnesses shall be in paper form, tabbed, paginated and in notebooks. All exhibits must be clearly legible. Exhibits exchanged between parties can be in any format agreed between counsel and parties.

b. Impeachment Exhibits. Exhibits intended to be used only for impeachment purposes shall be submitted to the Court and other parties via email separately from all other exhibits in a folder conspicuously labeled "For Impeachment Purposes Only," the contents of which shall be password protected. Upon cross-examination, the impeaching party shall reveal the password so that the applicable pdf file in the "For Impeachment Purposes Only" folder may be accessed.

7. Courtroom Formalities. Although being conducted using audio and videoconferencing platforms, a virtual hearing or trial constitutes a court proceeding, and any photographs or recording other than the official court version is prohibited by D. Kan. Rule 83.2.1. No participant may record images or sounds from any location. When called to testify, Remote Witnesses must situate themselves in such a manner as to be able to view the video screen and be seen by the Court. For purposes of virtual proceedings, the formalities of a courtroom must be observed, except that the Court will permit counsel and witnesses to remain seated, even when addressing the Court. Using "Gallery View" is recommended so you can view all participants at the same time. Please be aware that there may be a slight delay between the time words are spoken and when they are heard by others. Please try to avoid speaking over others.

8. Complex Chapter 11 Cases. Please refer to the case management order for any instructions to deviate from the above procedures.

9. Questions. For questions or if you have not received an expected Zoom conference email, please call (316) 315-4110.