

**UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

**ZOOM APPEARANCE PROCEDURES FOR ZOOM ELIGIBLE HEARINGS
FOR BANKRUPTCY JUDGE BENJAMIN A. KAHN**

On and after July 1, 2021, all hearings before the Bankruptcy Court for the Middle District of North Carolina will be scheduled as in-person hearings. Subject to public health emergencies or other exigent circumstances that may limit in-person attendance, alerts for which would be posted to the Court's website, the Court expects that parties and attorneys will appear in person at hearings. However, in certain, limited circumstances described herein, the Court may permit counsel or parties in interest to appear by video conference through Zoom for Government ("ZFG").

These procedures may be updated from time-to-time and can always be found on the "Chambers Contact and Procedural Info" page on the Court's website, available at <http://www.ncmb.uscourts.gov/content/benjamin-a-kahn>.

A. REMOTE ATTENDANCE AT HEARINGS:

1. Appearance by Counsel or a Party in Interest. Upon the request of counsel or a party in interest, the Court may permit counsel or parties to appear by remote means. Any request to appear via Zoom for Government should be sent to the Courtroom Deputy for Judge Kahn, Karen Champagne, at (336) 358-4018 or at karen_champagne@ncmb.uscourts.gov, and via email to Video_Court@ncmb.uscourts.gov.

Requests must be made no later than 24 hours prior to the hearing. Any request must include the ZFG name (or telephone number, if a telephone will be used to connect) which the requesting person will be using to attend so that the Court may identify those authorized to attend remotely. Requests will be considered on a case-by-case basis and are subject to the Court's discretion. If authorized to appear remotely, the Court will provide connection information to the requesting party or its counsel, as applicable. **Any person**

permitted to appear via remote means will not be permitted to examine or cross examine any witness, offer evidence, or object to admission of any evidence unless the Court orders otherwise prior to the hearing.

2. Members of the Public and Media. Nothing in these procedures authorizes non-party members of the public or the media to access the hearing either by audio or video connection unless authorized by the Judicial Conference of the United States and this Court. Members of the public or media may attend the proceedings in-person in open court.

3. Disconnecting Unauthorized Connections. **Connections from any name or number not registered with the clerk under paragraph 1 and any other unauthorized connections to ZFG will be disconnected and not permitted to rejoin.**

4. Testimony. Except with respect to direct testimony offered by declaration as permitted under Local Rule 9014-1, any witness testimony, including cross examination of any declarant, will be taken in open court unless otherwise ordered by the Court prior to the hearing. If any party wishes to offer testimony in open court by contemporaneous transmission from a different location, the party must first confer with all parties in interest to the affected proceeding in which the party will offer testimony to determine whether each consents to remote testimony. After conferral, the offering party must file a motion requesting such authority under Fed. R. Bankr. P. 9017 and Fed. R. Civ. P. 43(a) **at least seven (7) days prior to the hearing.** Any such motion must indicate whether all parties in interest to the proceeding consent to remote testimony by contemporaneous transmission from a different location. The motion further must contain the following information: (a)

the name and address of each proposed Remote Witness from whom the sponsoring party may offer testimony; (b) the matter on which the Remote Witness will provide testimony; (c) the location of the Remote Witness (city, state, country); and (d) the place from which the Remote Witness will testify (e.g., home, office – *no addresses are required*). **If the Court does not grant any motion for remote testimony prior to the commencement of the hearing, the Court will conduct the hearing in-person in open court except with respect to counsel or a party as permitted under paragraph 1 above, if applicable and permitted by the Court.**

5. Method of Connection. If the Court authorizes a witness to testify from a different location, any Remote Witness must connect through ZFG. At least 24 hours prior to the hearing, the requesting party must provide to the Courtroom Deputy for Judge Kahn, Karen Champagne, at (336) 358-4018 or at karen_champagne@ncmb.uscourts.gov, and via email to Video_Court@ncmb.uscourts.gov, the ZFG name under which the Remote Witness will connect to the proceeding.

6. Remote Witness Testimony. Any approved Remote Witness will be subject to the following terms and conditions:

- (a) All Remote Witnesses must be affirmed and their testimony will have the same effect and be binding on the Remote Witness in the same manner as if such Remote Witness was affirmed and testified in open court.
- (b) Each Remote Witness must provide his or her testimony from a quiet room and must situate himself or herself in such a manner as to be able to both view the video feed and be seen by the Court.

(c) While the Remote Witness is affirmed and testifying: (i) no person may be present in the room from which the Remote Witness is testifying; (ii) the Remote Witness may not have in the room any documents except the exhibits submitted by the parties pursuant to paragraph 25 below, and any declaration submitted in lieu of direct testimony; and (iii) may not communicate with any other person regarding the subject of the testimony, by electronic means or otherwise. If the Remote Witness or counsel seek to communicate with one another, either must openly request a recess for such purpose. If such request is granted by the Court, the Remote Witness and counsel may privately confer "offline," i.e., by telephonic means that are not transmitted to the other parties.

7. Submission of Exhibits to Court. Notwithstanding Local Rule 5005-1, parties intending to offer exhibits or demonstratives relating to a Remote Witness (collectively, "Remote Exhibits") at a hearing must file all Remote Exhibits on the docket in bookmarked .pdf format no later than **5:00 p.m. prevailing Eastern Time two business days prior to any scheduled hearing**, and must contemporaneously serve the filed Remote Exhibits by email on counsel for each of the parties who has made an appearance on the relevant Pending Matter and the U.S. Trustee. All Remote Exhibits must be separately labeled. Filing of any Remote Exhibit will not require that exhibit to be offered into evidence at the hearing, nor will any proposed Remote Exhibit be considered as evidence unless offered and admitted at the hearing. Notwithstanding the foregoing, any Remote Exhibit that will be used solely for rebuttal or impeachment ("Password Exhibit") may be separately password

protected, which password must be provided at the hearing in the event the offering party determines to use such exhibit.

8. Responsibility for Remote Witnesses. The Party sponsoring any Remote Witness will be responsible for ensuring that the ZFG link is supplied to the Remote Witness prior to the hearing and that the Remote Witness has access to ZFG, as applicable. **The Party sponsoring a Remote Witness must ensure that the witness has printed copies of all exhibits filed with the Court by all counsel prior to the start of the hearing. In addition, any party sponsoring a Remote Witness must ensure that the witness has the ability to access any password-protected Demonstrative or Rebuttal Exhibits during the hearing on a device separate from the device used to connect to the hearing. In lieu of printed copies, a witness may have electronic copies that will be readily accessible and reviewable by the witness during testimony on a device separate from the device used to connect to the hearing.**

9. Courtroom Formalities. Although conducted using audio and video conferencing technologies, these evidentiary hearings constitute court proceedings. **No person may record—from any location or by any means—the audio or video of the hearing.** The audio recording created and maintained by the Court shall constitute the official record of the hearing. Further, the formalities of a courtroom will be observed. Counsel and Remote Witnesses must dress appropriately, exercise civility, and otherwise conduct themselves in a manner consistent with the dignity of the Court and its proceedings.

10. Checking in for Hearing. Due to the Court's security requirements for participating in a ZFG audio and video hearing, all persons seeking to attend the hearing

via ZFG must connect to the hearing beginning fifteen (15) minutes prior to the scheduled commencement of the hearing. When persons sign into ZFG and add their names, they must type in the first and last name that will be used to identify them at the Hearing. Parties that type in only their first name, a nickname or initials will not be admitted into the Hearing. When seeking to connect for either audio or video participation in a ZFG Hearing, participants will first enter a "Waiting Room," in the order in which they seek to connect. Court personnel will admit each person to the Hearing from the Waiting Room after confirming the person's name (or telephone number, if a telephone is used to connect) provided to the Court in accordance with this Order.

11. Access Codes for Remote Participation. All participants authorized to appear by ZFG must use ZFG for both audio and video. The ZFG link and any password will be provided only to a person who is authorized to appear via ZFG by the Court.

12. Waiver of Right to Attend Hearing. **Any person who connects to the courtroom via ZFG without obtaining prior approval under these procedures will be immediately disconnected and will be deemed to have waived the right to attend the hearing. Any person attending the hearing by remote means accepts the risk of technological failures or errors, and such failures or errors may not be cause for a continuance of the hearing in the Court's discretion.**