

WESTERN DISTRICT OF MISSOURI BANKRUPTCY COURT

PROCEDURES TO FOLLOW WHEN A NOTICE AND ORDER SETTING HEARING VIA ZOOM VIDEOCONFERENCE IS ENTERED

1. **Service of this Order.** The party obligated to serve the Notice and Order setting hearing regarding a matter set for hearing by video conference shall include a copy of this Order with such notice of hearing and file a certificate of service as required by the Notice and Order setting hearing.

2. **Video Conference.** The court will conduct the hearing by video conferencing using the services of Zoom Video Communications, Inc. because of the dangers presented by the COVID-19 pandemic. The court will provide a password-protected link for the appropriate Zoom video conference to those approved persons who have submitted to the court a notice of intent to participate in accordance with paragraph 3 below. Participants receiving the link to the Zoom video conference shall not forward that link to any other person without first obtaining the court's express authorization. All approved participants shall conduct a pre-hearing test of Zoom using the same equipment that they intend to use during the hearing. Participants should use a headset, headphones, earbuds, or similar equipment and should not use the microphone and speakers built into their devices unless the device has first been tested and proves not to create feedback for Zoom meetings. Participants will be placed in the Zoom waiting room until the court starts the meeting and invites participants into the main hearing session. Participants shall keep their devices on mute when not talking as part of the proceeding. To ensure the accuracy of the record, participants should identify themselves before speaking each time. The court reserves the right to mute or remove from the hearing any participant at any time to minimize feedback or disruptions to the record.

3. **Prior Notice of Intent to Participate; Limit on Participation by Video; Telephone Participation.** All persons (including witnesses) wishing to participate in the hearing by video conference shall provide notice to [courtroom deputy] _____ **via electronic mail no later than [____ p.m. prevailing Central Time on the court day preceding the date of the hearing].** Such notice shall include the full name and electronic mail address of the proposed video participant and shall identify the party represented. Counsel for each party shall provide to the court the required information for each party participant and any witness that party intends to call during the hearing. The parties are encouraged to limit video conference participation to those who are necessary to the presentation of the matter(s) set for hearing. If the court believes the number of persons wishing to participate in the video conference exceeds the number which would permit the efficient, stable, and reliable transmission of the hearing by video conference, the court may require that certain persons be

permitted to participate in the hearing by telephone. The court will provide separate dial-in instructions to each person participating by telephone.

4. **Exhibits.** In addition to filing exhibits electronically and delivering exhibit binders to the court (if required by local rule or a pretrial order), counsel must, prior to the hearing, provide relevant exhibits to each witness with whom they intend to sponsor an exhibit. For any exhibit to be used in impeachment or rebuttal and not previously provided to the court and opposing counsel, counsel shall transmit the exhibit during the hearing via electronic mail or use the Zoom document sharing feature.

5. **Public Access.** The hearing is a public matter. The general public is invited to listen to the hearing by telephone. Any person wishing to listen to the hearing by telephone may contact [courtroom deputy] at _____ to obtain dial-in instructions.

6. **Recording Prohibited; Official Record.** No person may record the proceedings from any location by any means. The audio recording maintained by the court shall be the sole basis for creating a transcript that constitutes the official record of the hearing.

7. **Remote Witness Testimony.** The court may determine to permit examination and cross-examination of witnesses. In accordance with Rule 43(a) of the Federal Rules of Civil Procedure (made applicable by Rule 9017 of the Federal Rules of Bankruptcy Procedure), for good cause and in compelling circumstances a witness may be permitted to testify by contemporaneous transmission from a location other than the courtroom. The court finds that the public danger presented by the COVID-19 pandemic merits application of Rule 43(a) to all witnesses who may testify in connection with the matter(s) set for hearing. Each remote witness called to testify or subject to cross-examination shall be permitted to testify by contemporaneous transmission from a different location by video conference, as provided in this Order. Witnesses may join the hearing at the beginning, unless a party or the court invokes the sequestration rule (FRE 615), in which case each excluded witness will remain in the Zoom waiting room until it is time for that witness to testify, unless otherwise instructed by the court. Counsel is responsible for securing the participation of the witness on a timely basis and without imposing any delay on the hearing. The court will administer the oath to each remote witness during the video conference, and witness testimony will have the same effect and be binding upon each remote witness in the same manner as if such remote witness was sworn in by the court in person in open court. As additional safeguards for the allowance of remote testimony, the court requires as follows: (a) each remote witness must disclose the city, state, and country, and the type of place (such as home or office), where the witness is located while testifying, (b) no other person shall be permitted to be in the same room with any remote witness unless specifically and expressly authorized by the court before the witness begins

testifying, (c) each remote witness shall have only those documents also provided to the court for consideration in connection with the matter(s) set for hearing and no other documents or data, and (d) no person shall communicate in any manner with a witness during his or her testimony, except by direct examination or cross-examination on the record, unless specifically and expressly authorized by the court before the communication takes place. The court or any party may request that the witness display identification or that one or more other participants vouch for the witness, if there is any question about the identify of a witness.

8. **Conduct during Hearing.** Although conducted using video conferencing technology, the hearing is a court proceeding. The formalities of the courtroom shall be observed. Counsel and witnesses shall dress appropriately, exercise civility, and otherwise conduct themselves in a manner consistent with the dignity of the court.