



DISTRICT-WIDE STEERING COMMITTEE UPDATE: NINTH ANNUAL BENCH BAR CONFERENCE

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In keeping with 2020 being an unprecedented and historic year, the Steering Committee hosted its Ninth Annual Bench Bar Conference by Zoom. As always, the Conference, which was held on November 4, 2020, was well attended and included judges, courtroom personnel, trustees, and attorneys from each division in the Middle District. Although the attendees were “together” for the opening and closing general sessions, each table “zoomed” out to virtual breakout rooms for the topic discussions to allow for more personal interaction.

This year’s topics were *Administering Subchapter V Cases under the Small Business Relief Act* and *Practicing During and After the Pandemic: Guidelines for Now and for the Future*. The Committee felt that both these topics were particularly apt for the 2020 Conference considering that the SBRA was enacted February 19, 2020, and we have all been practicing under this “new normal” since the end of March 2020.

In lieu of a general presentation of each topic, as has been done in prior years, each breakout group was given a roadmap for discussion. Because each breakout group had a mix of judges and practitioners, the discussions were more practical than theoretical.

Regarding the SBRA, the general consensus was that the process needs some tweaking. While the SBRA is based on Chapter 11 procedures, Subchapter V debtors would benefit from a slightly faster moving process. To streamline the process, participants suggested that changes could be made to the First Day Orders, Plan, and Confirmation Order, making it easier for small businesses to maintain their day-to-day business activities and, thus, increasing the likelihood of a successful reorganization. While the SBRA is still in its early stages, everyone agreed that

carving out a separate process for small businesses was something that has been missing in the Bankruptcy Code.

The second topic—*Practicing During and After the Pandemic*—was the source of more lively discussion because this is a topic that has affected every single person in attendance. A key aspect of the discussion was the pros and cons of telephonic or video hearings versus the traditional in-person hearings. Across the board, there was a strong preference for video appearances over telephonic appearances. And, given the choice, most practitioners preferred any version of virtual hearings over in-person hearings.

Many attorneys felt that removing the need to commute, park, and wait for a hearing at the courthouse has allowed for a noticeable savings in time and expenses. Unfortunately, the other side of the convenience is the reduction in respect for the process that some debtor and attorneys have exhibited since virtual hearings began. Some judges and trustees told war stories of some of the more interesting/disappointing experiences that they have witnessed during a virtual hearing.

There was also a lot of discussion about what technology and virtual aspects of bankruptcy practice should be kept post-pandemic. For example, if someone can appear virtually, can distance no longer be claimed as an undue hardship to testifying? Everyone agreed that once in-person appearances are safe again (and possible), perhaps some hybrid of in-person and virtual appearances is the future for Bankruptcy practice.

Thankfully, technology allowed the Steering Committee to be able to host the Conference in the year of no gatherings. While the virtual nature of the Conference allowed attendees from all over the district to attend, participate, and contribute with minimal disruption to their work routine, many of us did miss the opportunity to make personal connections and have some rare one-on-one time with the judges and other courtroom staff. Perhaps along with the practice of bankruptcy, a hybrid of virtual and in-person attendance is also in the future for the Committee's Annual Bench Bar Conference.