

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

**In Re: BANKRUPTCY COURT
OPERATIONS UNDER
EXIGENT
CIRCUMSTANCES
ATTRIBUTABLE TO
COVID-19 AND RELATED
CORONAVIRUS**

**GENERAL ORDER NO.
2020-4-BPH**

FILED

MAR 16 2020

Clerk, U.S. Courts
District Of Montana
Missoula Division

ORDER

At Butte in said District this 13th day of March 13, 2020.

Over the last 72 hours, there have been increasing closures of public places in order to “flatten the curve” and slow the spread of Coronavirus, COVID-19 (“Virus”). These closures have extended to schools, restaurants, retail businesses and follow the cancellation of sporting events, large gatherings, and the National Declaration declaring the spread of the Virus a national emergency on March 13, 2020.¹

More recently, on March 15, 2020, the Centers for Disease Control (“CDC”) recommended that “for the next 8 weeks, organizers (whether groups or individuals) cancel or postpone in-person events that consist of 50 people or more

¹ <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

throughout the United States.”² Although it is unlikely that any singular hearing or § 341 Meeting would result in 50 or more people, CDC guidance conditions gatherings of less than 50 people on protecting vulnerable populations³, hand hygiene⁴, and social distancing.⁵ Further, when possible the CDC recommends remote or virtual participation.

Having reviewed the CDC guidance, proceeding as usual is perilous. This Order endeavors to balance society’s broad need to “flatten the curve” by reducing the risk of exposure and slowing the spread of the Virus with the Court’s equally important obligation to secure the just, speedy and inexpensive determination of every case and proceeding before it. This Court is incapable of determining whether any attorney, party, corporate representative, or witness may qualify as vulnerable or, has adequately employed hand hygiene. However, this Court may impose procedures that impose social distancing and virtual participation measures consistent with CDC guidance.

² <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html>

³ <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html>

⁴ <https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html>

⁵ *Id.*

This Order supplements General Order _____ entered by the Courts for the District of Montana on _____, (“Courts’ Order”). Bankruptcy Court operations will be specifically modified as follows, until the sooner of April 16, 2020, or further Order of this Court (“Term of the Order”):

1. Local Bankruptcy Rule (“LBR”) 2003-4, “Continuance of Creditor’s Meetings,” will be suspended and not applicable during the Term of the Order.

During the Term of the Order the following § 341 Meetings are scheduled to occur:

<u>Date</u>	<u>Division/Location</u>	<u>Chapter</u>
March 31	Great Falls	Chapters 7, 11, 12, and 13;
March 23	Missoula	Chapter 12 and 13
March 23	Kalispell	Chapter 12 and 13
March 19	Butte	Chapter 7
March 26	Billings	Chapter 7
April 2	Butte	Chapter 12 and 13
April 7	Billings	Chapter 12 and 13
April 14	Missoula	Chapter 7

In this District, certain § 341 Meetings are scheduled to occur in the Courthouses, subject to any action taken by the U.S. Trustee’s Office. Permitting these scheduled § 341 Meetings to go forward at the Courthouses creates an unacceptable risk of exposure to the Virus to the Court Security Officers, case Trustees, individual debtors, creditors, attorneys and other Court personnel.

2. To eliminate this risk, the scheduled § 341 Meetings shall be continued by notice by the case Trustee or conducted telephonically. If conducted

telephonically, the case Trustee shall file a notice in the case that identifies the specific date and start time for each debtor's § 341 Meeting, and provide dial in instructions for debtor, debtor's counsel and creditors.⁶ If the meeting is not concluded at the end of the allotted time, the meeting shall be continued, and the next scheduled meeting commenced.

3. During the Term of this Order hearings are scheduled on the following dates and locations:

- March 27 CHIEF MOUNTAIN COURTROOM, 3RD FLOOR, MISSOURI RIVER COURTHOUSE, 125 CENTRAL AVENUE WEST, GREAT FALLS, MONTANA.
- April 2 2ND FLOOR COURTROOM, FEDERAL BUILDING, 400 N. MAIN, BUTTE, MONTANA.
- April 3 CHIEF MOUNTAIN COURTROOM, 3RD FLOOR, MISSOURI RIVER COURTHOUSE, 125 CENTRAL AVENUE WEST, GREAT FALLS, MONTANA.
- April 10 CHIEF MOUNTAIN COURTROOM, 3RD FLOOR, MISSOURI RIVER COURTHOUSE, 125 CENTRAL AVENUE WEST, GREAT FALLS, MONTANA.
- April 7 ELLA KNOWLES COURTROOM, 4th FLOOR ROOM 4805, JAMES F. BATTIN UNITED STATES COURTHOUSE, 2601 2ND AVENUE NORTH, BILLINGS, MONTANA.

⁶ If the Trustees cannot provide a dial in due to expense or otherwise, the case Trustee may by motion request one from the Court, and the Court will enter an Order with dial in instructions.

April 9: BANKRUPTCY COURTROOM, RUSSELL SMITH
COURTHOUSE, 201 EAST BROADWAY, MISSOULA,
MONTANA.

The issues to be heard at these hearings are varied and the Court will not unilaterally continue the hearings on its own motion.

4. Instead, attorneys must confer with each other and their clients, and determine whether it is imperative that a hearing be held.⁷ If the parties agree to a continuance, an agreed or unopposed motion to continue must be filed with the Court, as soon as possible. If an agreement regarding a continuance cannot be reached, the party seeking the continuance shall file a motion with the Court outlining the relief requested, the party opposing it, and the reasons for the alleged objection. The Court may grant such motions without permitting a response or may request a response on shortened notice.

5. Once it is determined that a hearing scheduled during the Term of this Order must be held as scheduled or on an expedited basis, the parties must confer regarding the conduct of the hearing and method of participation. Despite this Court's strong preference for personal appearances at hearings, the immediate circumstances justify the liberal use of telephonic and video conference

⁷ The Court recognizes that any new cases that are filed during the Term of the Order may require hearings on shortened notice. For example, motions to use cash collateral or incur debt.

technology⁸ and the elimination of in person appearances at the Courthouses, to the extent possible. Requests to appear by videoconference shall comply with LBR 5074-1(b), and upon receipt of a request the Clerk's Office shall immediately notify Chambers.

6. Any party wishing to appear telephonically shall file a motion with the Court, and the Court will provide dial in instructions in an Order granting the request. After a dial in is requested by a party, any other parties in the case may attend the hearing by telephone so long as they file a "Notice of Intent to Appear Telephonically", giving the Court notice that they intend to call into the hearing. This "Notice" will assist the Clerk's Office and Court both in preparing for and managing the hearings.

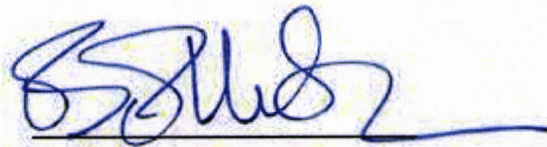
7. This Court has reservations regarding whether a witness should be permitted to testify by telephone. However, under the circumstances, it is prepared to make such exceptions on a case-by-case basis. To insure that hearings involving witnesses that may testify by phone are conducted efficiently, any party intending to present a witness telephonically shall meet and confer with opposing counsel and file a stipulation that outlines any agreement that is reached regarding the

⁸ Use of video technology only has benefits if the technology to be employed is owned by the party using it. Incurring the cost of a third-party provider and sitting in an otherwise public space utilized by unknown others for unknown purposes may do little to reduce the risk of exposure to the Virus.

parameters of the telephonic testimony and the handling of exhibits. Absent an agreement, the party intending to have a witness appear telephonically shall file a motion outlining any disputed issues. The opposing party will likely be ordered to respond on shortened notice and the Court will decide the issue.

8. To the extent this Order conflicts with any applicable LBRs, this Order is controlling.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "B. Hursh", written over a horizontal line.

**Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana**