

# Chief Bankruptcy Judge Alan S. Trust Steers Court into the Post-Pandemic World

By Craig D. Robins

Last month I profiled Judge Alan S. Trust who was sworn in as Chief Bankruptcy Judge for the Eastern District of New York in October. This month I will highlight some of the judge's plans for operating the court during these unsettled times, as well as his tips for practicing in a Covid world, based on a recent interview.

Covid-19 hit our courts as suddenly and dramatically as the rest of society. Running a court system during Covid-19 has proven to be quite a challenge. The bankruptcy courts in our district rapidly switched over to remote operations back in March, and according to Judge Trust, have been operating pret-

ty efficiently ever since. He noted that only a handful of employees are actually coming into the courthouse and that it's a judge-by-judge decision as to whether law clerks come in or work from home. He also observed that the bankruptcy bar has reacted very well to remote appearances.

Bankruptcy counsel are learning new skills that they didn't routinely use before, such as technology. He believes the remote appearances have been so successful that he intends to continue that practice after the pandemic has subsided. Right now, all appearances are by telephone and video connection. After things return to pre-Covid con-



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ditions, in-court appearances will round out the available platforms for appearing.

On the issue of some judges requiring counsel to use pay-per-appearance services which cost \$50 per appearance as opposed to a free dial-in number, something some practitioners have grumbled about, he said that there has been

some discussion about this, although he noted that many judges around the country use this procedure.

Judge Trust said that he wanted to compliment how the bankruptcy bar has responded to Covid. He noted that our lawyers have been really good about dialing-in ahead; con-

tacting the courtroom deputies as to issues; being polite and civil and courteous; and being patient about waiting their turn. "It's a great credit to the bar that they're doing such a good job appearing remotely," he said.

The judge did have some suggestions to improve the remote appearance experience. He said that counsel should periodically check each of the judge's chamber's rules, which can change from time to time. He also wanted counsel to be aware that different judges may have different policies for a particular procedure. He gave the example of filing a certificate of no objection to a pending motion, a totally new procedure designed to

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simplify the participation of counsel during Covid. Some judges permit this for all types of motions whereas others do not..

During video hearings, he reminds counsel they should not forget that the camera is always on you, and that counsel should feel free to turn their camera off when not addressing the court, similar to muting the microphone during an audio connection. He also humorously wanted to remind counsel that they should be careful with backgrounds during video appearances including “product placement,” giving the example of an attorney who had bottles of liquor behind him on his window sill.

The judge has been happy with a relatively new backdrop he began using for all video conferences depicting a scene of a worldly library bookcase. Now parties appearing in video appearances do not have to be distracted by what’s in the room in his house that he has converted into his video courtroom. Backdrops like this are available on

Amazon.com and other places.

Maintaining proper service of documents is another area the judge wanted to remind lawyers about. Even though we have a pandemic, counsel must still serve papers as required by the Bankruptcy Rules. He reminds counsel that ECF bounces do not constitute proper service.

Another interim rule the court entered to reduce human interaction was to temporarily suspend the wet signature requirement for pro se debtors. Unfortunately, this does not apply to all debtors.

The judge also discussed steps being taken to make the courthouse and the courtrooms more Covid-compliant. He said that the clerk’s offices were being reconfigured so that there are additional physical barriers and that all of the clerk’s operations will now be behind glass. All six of the active courtrooms will be equipped with plexiglass to protect court personal. Back bench areas will be set to be socially distanced. Of course, he

reminded counsel that wearing masks in the courthouse is mandatory.

Judge Trust pondered how the court should restructure its dockets, noting that in a Covid environment you can’t have so many debtors in the courtroom at the same time. He anticipates that there will be a new kind of case management.

“No more 40-50-60 cases on the calendar,” he said. “Maybe a combination of both telephonic and in-person appearances. There will be a fair amount of work to address this.”

Looking forward, and noting that it’s slow right now, the judge expects courtroom activity to greatly increase as a result of so many people having been out of work. “I expect we will see a boomerang effect.” He believes the court will be prepared for that like volleyball: “Hurry up and wait. We know it’s coming.” He pointed to the financial crisis of 2007-2008 and said he is expecting an increase in filings and court activity like that time, although it will be more challenging to

address an increase in filings when combined with Covid.

The judge also said he had hoped to organize a brown bag seminar some time in December to further discuss how bankruptcy practice is changing under Covid and to get some feedback from the Chapter 7 and Chapter 13 trustees about their current practices and procedures and what they may look like in the next year.

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