

Trustee Talk

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The Transition to Virtual § 341 Meetings: Lessons Learned, and Looking Ahead

Before the COVID-19 pandemic, with few exceptions, § 341 meetings of creditors¹ for chapter 7, 12 and 13 cases were conducted in person. Debtors and their counsel drove to office buildings or courthouses and sat in nondescript conference rooms awaiting their turn. Trustees called debtors individually to testify in sessions that typically lasted 10 to 15 minutes. Participants often missed work (and potentially lost much-needed pay), had to arrange for childcare, or incurred parking or other travel expenses. Some had to travel great distances to attend these in-person meetings. Only rarely did meetings occur by telephone or through interrogatories, typically for debtors with extenuating circumstances (e.g., incarceration, serious or terminal illness or active military duty).²

As the pandemic unfolded in early 2020, the U.S. Trustee Program (USTP) and private trustees quickly pivoted from in-person to virtual § 341 meetings that were conducted primarily by telephone. By avoiding significant disruption to the efficient administration of bankruptcy cases, the shift to telephonic § 341 meetings helped sustain the bankruptcy system's operations during a historic emergency. Virtual § 341 meetings also came to enjoy broad support as their benefits to the bankruptcy system and stakeholders became apparent.

Now, the USTP is implementing a policy of conducting § 341 meetings over video in all chapter 7, 12 and 13 cases in USTP jurisdictions. The policy is the product of careful preparations to ensure that virtual meetings deliver on their promise of added efficiency while preserving the integrity of the bankruptcy system.

This article describes the evolution of virtual § 341 meetings and the USTP's attention to the user experience and procedural safeguards, with lessons learned from telephonic meetings and a pilot program in several jurisdictions that demonstrated video's clear advantages. It also looks ahead to remaining components of the transition

to video § 341 meetings, and highlights USTP resources to help practitioners and other participants adapt with ease.³

A Long-Term Solution

The deft transition to virtual § 341 meetings at the onset of the pandemic avoided significant disruption to the efficient administration of cases, and speaks to the dedication of courts, clerks, trustees and practitioners. Although born of necessity, virtual meetings proved a capable method of administering cases efficiently under unprecedented circumstances. They also revealed a number of advantages for participants in the bankruptcy system. Particularly in consumer cases, virtual meetings resulted in greater debtor attendance, thus requiring fewer continuances. Creditor participation improved, and stakeholders saw substantial time and cost savings.

The USTP sought to build on this success by identifying a long-term solution. This meant maintaining the benefits of virtual § 341 meetings while strengthening processes that promote their integrity. These processes include preserving the evidentiary value of meeting testimony, and promoting the formality and solemnity of these meetings, which are the only formal bankruptcy process that many debtors experience in the administration of their cases. Telephonic meetings posed challenges with debtor identification, credibility determinations and decorum. Meanwhile, videoconference technology proliferated, both commercially and personally, as the pandemic persisted.

Thus, the USTP began considering using videoconference platforms to conduct § 341 meetings. Trustees also inquired about using video platforms soon after the initial pivot to virtual meetings by phone. The USTP proceeded cautiously, approving trustee requests to conduct video § 341 meetings only in select instances and only with appropriate security measures in place.

After careful research and deliberation, the USTP determined that virtual § 341 meetings should

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¹ 11 U.S.C. § 341.

² See, e.g., *Handbook for Chapter 7 Trustees* at 3-10, and *Handbook for Chapter 13 Standing Trustees* at 3-15, both available at [justice.gov/ust/private-trustee-handbooks-reference-materials/chapter-7-handbooks-reference-materials](https://www.justice.gov/ust/private-trustee-handbooks-reference-materials/chapter-7-handbooks-reference-materials) (unless otherwise specified, all links in this article were last visited on Nov. 17, 2023).

³ See "Section 341 Meeting of Creditors Information," U.S. Trustee Program, available at www.justice.gov/ust/moc.

replace in-person meetings in the post-pandemic era, with a preference for a videoconferencing format. The USTP also designed a pilot program to conduct virtual § 341 meetings in Region 19 (Colorado, Wyoming and Utah) using the Zoom videoconferencing platform beginning in January 2023.

Not surprisingly, video proved superior to the telephone in promoting debtor verification, credibility determinations and decorum. Debtors could attend from any quiet location with an internet connection, including their residence or their attorney's office. Trustees could perceive debtors and their counsel, in addition to the interactions among them. Virtual waiting rooms helped maintain order until trustees were ready to call the participants for each case. Thus, video alleviated several concerns with in-person meetings while reintroducing aspects that safeguard the integrity of the bankruptcy system.

Laying the Groundwork for Virtual § 341 Meetings by Video

The Region 19 pilot prompted the USTP to build a framework that would help ensure consistency, satisfy all applicable legal and related USTP requirements, and maximize the user experience for all stakeholders.⁴ First, the USTP released two key governing documents: one establishing interim procedures to guide trustees in conducting their virtual § 341 meetings,⁵ the other for debtors and other parties-in-interest.⁶ Even at the pilot's inception, the USTP anticipated that the guidance would evolve with experience. Second, to assist participants with specific needs, the USTP created a series of "how to" documents. The subjects included setting up and activating Zoom licensed accounts (for trustees), connecting and joining a Zoom § 341 meeting (for participants), using Zoom to connect a language interpreter to a § 341 meeting and changing the Zoom display language for non-English speakers.

Third, the USTP created a survey for trustees to provide prompt feedback after every § 341 meeting calendar. These forms also helped trustees report issues involving connectivity and technology, debtor identification verification, decorum, security and debtor attendance. The surveys from the first eight months showed not only that Zoom meetings work, but that the vast majority ran smoothly with no issues. Among other highlights:

- Just over 1 percent of all cases experienced an unresolved connection issue, with only a slightly higher percentage (3 percent) in cases involving self-represented debtors;
- Although unresolved identification-verification issues arose in about 12 percent of self-represented cases, the rate among all cases was only about 2 percent;

- Only five cases (less than 0.1 percent) were reported as having decorum issues;
- Issues specific to a case — and not with identification verification or connectivity — were the leading factor in whether trustees had to continue meetings, and almost all of these continued meetings were conducted over video, with very few having to be completed telephonically; and
- Non-appearances were very low, at about 3 percent of all cases.

To assist self-represented debtors, many trustees were encouraged to send information, document requests and Zoom links before the meetings to facilitate debtor appearances. The USTP appreciates trustees' extra measures such as these. The feedback collected from individual trustees during the pilot continues to assist in the effort to improve virtual § 341 meetings.

Finally, and perhaps most importantly, the USTP undertook extensive outreach to members of the bankruptcy community to discuss the pilot and its effect on all stakeholders. The USTP met multiple times with the Administrative Office of the U.S. Courts, the Bankruptcy Clerks Advisory Group, the three bankruptcy clerks of court in Region 19, trustee software providers, the National Association of Bankruptcy Trustees and the National Association of Chapter 13 Trustees. Other forms of outreach included training and candid dialogue with debtors, debtors' attorneys and legal aid providers, among others.

As a whole, the Region 19 pilot was an overwhelming success, with nearly all Zoom meetings proceeding without issue while continuing to accomplish an important statutory purpose. The USTP later expanded the pilot — with similarly successful results — to Regions 9 (Michigan and Ohio) and 15 (Southern District of California, Hawaii, Guam and the Northern Mariana Islands).

Nationwide Expansion in Two Waves

Spurred by the pilot's success, the USTP recently announced its intent to expand video § 341 meetings nationwide, with expansion occurring in two waves. The USTP successfully undertook the first wave, which generally covered the eastern half of the U.S.; the second will cover the remaining western half.

The USTP implemented this approach after the Administrative Office of the U.S. Courts informed the USTP of the judiciary's 2023 data center move and the challenges that it could pose for a court considering whether to implement § 341 meetings via Zoom. Proceeding in two waves helped avoid disruptions to the CM/ECF Test and Train servers on the West Coast related to the San Diego data center closure.

Based on lessons from the pilot, the USTP prioritized the assignment and distribution of Zoom licenses to all trustees. The timely activation of these accounts provided trustees with necessary instructions long before conducting their first § 341 meetings on the Zoom platform using the USTP-issued Zoom licenses. At the same time, this also ensured that the USTP had sufficient Zoom licensing information to coor-

⁴ The USTP established standardized settings and control features that were preconfigured in each Zoom licensed account. These features include a warning disclaimer from the Federal Bureau of Investigation in both English and Spanish; a customized virtual waiting room that informs participants they have entered the proper meeting; use of an official background for trustees to display; and controls for the trustee to mute or unmute microphones, stop video feeds, manage screen-sharing, place participants in virtual waiting rooms or remove participants from meetings.

⁵ Interim Procedures for Trustees to Conduct Virtual § 341(a) Meetings of Creditors in Chapter 7, 12, and 13 Cases. The term "interim" reflects adoption during the pilot and the understanding that the documents were subject to change in response to further experience and lessons learned.

⁶ "Best Practices for Debtors, Debtors' Attorneys, and Other Parties in Interest for Attending Virtual § 341(a) Meetings of Creditors in Chapter 7, 12, and 13 Cases," USTP, available at justice.gov/ustp/page/file/1590001/download.

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dinate with bankruptcy courts and clerks on the CM/ECF noticing changes needed for launch in individual districts.⁷

Now activated, these Zoom-licensed accounts are unique to each trustee and act as the trustee's virtual meeting room. This virtual meeting room can be accessed only through the trustee's unique personal meeting identification number or dedicated phone number and passcode.

At the same time, the USTP created national and local § 341 meeting information webpages to provide timely status updates to the public and foster awareness of available resources to ensure the success of the video § 341 meetings. Among other things, the USTP posted on its national website (a link that appears on every video § 341 meeting notice transmitted by bankruptcy court clerks) a guide to best practices for debtors, debtors' attorneys and other interested parties for attending virtual meetings, along with Zoom connection instructions, and links to dedicated local § 341 meeting information pages for every judicial district in which the USTP operates.⁸ In turn, these local pages include a table with all trustee names, contact information, meeting identification numbers, passcodes, dedicated Zoom phone numbers and software portals, as well as tables listing alternate in-person meeting locations.

Once again building upon experiences from the pilot, the USTP undertook extensive training and outreach⁹ as it rolled out the first wave this fall. To that end, more than 400 trustees received multiple sessions of training on the USTP's interim procedures and on the features of Zoom they will use to conduct § 341 meetings. Many trustees' assistants, staff attorneys and hearing officers also attended these training sessions.

In addition, the USTP conducted outreach sessions to attorneys, primarily debtor's counsel, in each district in the first wave. These outreach sessions have been well attended, with hundreds of attendees in some of the USTP's larger districts, and they have provided important feedback on the best practices promoted by the USTP. The USTP appreci-

ates the help of many courts in disseminating information about these outreach sessions to the attorneys in their districts. As with the pilot, the collective efforts of the USTP, bankruptcy courts, trustees and practitioners made the first wave successful.

Looking Ahead

The USTP anticipates completing the second wave in early 2024. Even after the nationwide expansion is complete, the USTP will continue to assess user experience and determine whether current policies and procedures can be improved or modified to best accomplish overall objectives. The USTP welcomes suggestions on further improvements to the process, especially from stakeholders who often participate in virtual § 341 meetings.

Accordingly, the USTP recently partnered with the Department of Justice's Office for Access to Justice in conducting a listening session with attorneys from Colorado Legal Services who provide bankruptcy services to low-income individuals and seniors. The session provided an opportunity to better understand the video § 341 meeting experience of debtors from underserved communities and their attorneys. The attendees confirmed that video § 341 meetings improve attendance and participation by debtors, and their feedback will be useful as the USTP works on future improvements.

Consistent with the pilot program, the USTP recognizes that the experience will naturally improve over time as trustees and practitioners become accustomed to virtual § 341 meetings on Zoom. Additional experience should boost user confidence and allow more efficient resolutions when problems arise.

Conclusion

The USTP remains excited about both the progress and promise of virtual § 341 meetings. Virtual meetings by Zoom satisfy statutory obligations while facilitating broader access with less time and cost involved, for the benefit of all bankruptcy system stakeholders. The professionalism and hard work of bankruptcy courts and clerks, trustees and practitioners have made early transition efforts successful. The USTP appreciates these partnerships as it strives to ensure the long-term success of virtual § 341 meetings. **abi**

⁷ The USTP greatly appreciates the significant effort from bankruptcy court clerks to implement the noticing adjustments. To maximize participation and access to the virtual § 341 meetings, the USTP worked with the clerks so that every § 341 meeting notice contained not only the meeting identification number and passcode, but also the trustee's dedicated Zoom phone number and a link to the USTP's publicly available resources. Providing the phone number ensured that a person without access to a smartphone, laptop or the internet would not be precluded from joining the § 341 meeting.

⁸ See "Section 341 Meeting of Creditors Information," *supra* n.2.

⁹ The USTP also met with representatives from several organizations representing trustees and consumer bankruptcy attorneys to discuss specific concerns from their respective memberships.

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