

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

In re:

(i) Modification of the Original Signature Requirement for Non-Attorneys, as Defined in Vt. LBR. 9011-4(c), and (ii) Modification of Attorneys' Duty to Maintain Original Documents, under Vt. LBR 9011-1(b), in Response to the Exigent Circumstances Created by COVID-19, and the Preventative Measures Enacted in Response to the Pandemic

**STANDING ORDER
20-10**

The Governor of the State of Vermont has declared a public health emergency throughout the State, including a directive to shelter in place and leave home only for essential travel (see Addendum 6 to Executive Order 01-20); and the Federal Court for the District of Vermont has taken steps to dramatically reduce the number of people who need to come to court, to minimize potential exposure to COVID-19 (see General Orders ## 85–88). Since attorneys who practice regularly in this Court file all documents electronically and hearings in this Court are now being conducted exclusively by telephone, it is now possible for bankruptcy cases to proceed without delay and without attorneys coming into the Bankruptcy Court (see Standing Order # 20-09). Additionally, this Court has temporarily modified its procedures to permit chapter 13 plans to be confirmed without debtors appearing at confirmation hearings if they file an affidavit in support of confirmation (see VTB Local Form CV-1) and announced it will grant requests for a continuance or postponement of a hearing based on exposure to, or the consequences of, COVID-19.

The Court is aware, however, that additional relief may be needed with respect to the current requirement for “original” (what some call “wet ink”) signatures of non-attorneys. The pertinent Local Rule states:

VT. LBR 9011-4. SIGNATURES.

(c) Signatures of Non-Attorneys Generally.

All documents submitted for filing by a non-attorney **must be signed in ink (the “original signature”) by the non-attorney. An electronic image of the non-attorney’s original signature is acceptable and shall be treated as the original signature** for purposes of Federal Rule of Bankruptcy Procedure 9011, all other Federal Rules of Bankruptcy Procedure, these Rules, and for any other purpose for which a signature is required in connection with matters before the Court. Further, below their original signature, the signing party must print or type their name, mailing address, e-mail address, and telephone number. See Vt. LBR 9011-2(a).

Vt. LBR 9011-4(c)(emphasis added).

Under the Governor's shelter in place order, debtors and other individual parties in interest are prohibited from going to see their attorney in person, where they can review paper physical documents they need filed in their case and sign them. Moreover, if those debtors or other individual parties in interest do not have printers and scanners or mail delivery at their homes, this may make it difficult, if not impossible, to affix their original (what some call "wet ink") signature on documents they need to file with this Court.

In light of the unique and exigent circumstances created by the pandemic, and the preventative measures the judicial and executive branch have enacted in Vermont in response to the pandemic, THIS COURT FINDS cause to temporarily modify the definition of "original signature" in order to avoid having individuals put their health at risk to obtain bankruptcy relief in Vermont.

Accordingly, IT IS HEREBY ORDERED:

1. If, while this Standing Order is in effect, a non-attorney is unable to execute a document with an "original signature" due to circumstances resulting from COVID-19 or the preventative measures in place in response to the pandemic, then the non-attorney may instead execute the document for filing using a digital signature via a commercially available digital signature software product using two-factor authentication (e.g., DocuSign). Under these circumstances, either means of executing the document is acceptable and shall be treated as the original signature for purposes of Federal Rule of Bankruptcy Procedure 9011, all other Federal Rules of Bankruptcy Procedure, these Rules (see, e.g., Vt. LBR. 1007-1(d), 5005-2(a) & (b)), and for any other purpose for which a signature is required in connection with matters before the Court.
2. While this Standing Order is in effect, Vt. LBR. 9011-4 is amended to read as follows, with the new, modified text in red:

Vt. LBR 9011-4. SIGNATURES.

(c) Signatures of Non-Attorneys Generally.

All documents submitted for filing by a non-attorney must be signed in ink **or via a digital signature software product that uses two-factor authentication. Either means of execution of the document shall constitute the "original signature" of the non-attorney.** An electronic image of the non-attorney's original signature is acceptable and shall be treated as the original signature for purposes of Federal Rule of Bankruptcy Procedure 9011, all other Federal Rules of Bankruptcy Procedure, these Rules, and for any other purpose for which a signature is required in connection with matters before the Court. Further, below their original signature, the signing party must print or type their name, mailing address, e-mail address, and telephone number. See Vt. LBR 9011-2(a).

Vt. LBR 9011-4(c)(emphasis added).

3. The revised definition of "original signature" applies to non-attorney signatures on documents submitted directly by a non-attorney party (a "*pro se*" filer) as well as to the signatures on documents a registered ECF filer submits on behalf of a non-attorney (i.e., their client). It encompasses all documents which require an original signature, including, without limitation, petitions, schedules, and statements.

4. Notwithstanding the revised definition, registered ECF filers should make their best effort to obtain an original signature signed in ink whenever, in their professional judgment, they can do so without putting their health or the health of their client at risk, and without diminishing timely access to justice.
5. For all filings submitted while this temporary Standing Order is in effect, the Local Rule 9011-1(b) requirement that the registered ECF filer maintain a paper original is hereby modified as follows, with the new, modified text in red:

VT. LBR 9011-1. ATTORNEYS – DUTIES AND RETENTION OF DOCUMENTS.

...

(b) Attorney's Duty to Retain Certain Originals of Electronically Filed Documents. The debtor's attorney must retain paper originals of all documents which (1) have signatures and (2) were filed electronically, for 5 years from the date of the filing of the document. **If the client's "original signature" was created through the use of a digital signature (e.g., DocuSign), then the "original of electronically filed documents" the attorney must retain includes (i) a paper copy of the filing, and (ii) proof the debtor executed a digital signature on that filing (e.g., DocuSign Certificate of Completion).** The filer may be required to provide the originals **of electronically filed** documents to the Court upon the Court's request, and to other courts upon appropriate orders or subpoena.

6. A registered ECF filer or non-attorney may seek additional modification of this Court's requirements regarding original signatures if necessary to protect their health, the health of their client, or timely access to justice, by filing a motion demonstrating exigent circumstances.
7. This is a temporary Order. It is effective upon entry and shall expire automatically on July 1, 2020, unless the Court orders otherwise.

SO ORDERED.

April 8, 2020
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge