



AMERICAN
BANKRUPTCY
INSTITUTE

2020 Consumer Bankruptcy Forum

COVID-19 and Bankruptcy

Presented by the Hon. Steven W. Rhodes
Consumer Bankruptcy Conference

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**SUBSTANTIVE CHANGES TO
PRACTICE AS A RESULT OF
COVID-19, THE CARES ACT,
AND STATE EMERGENCY ORDERS**

Hon. Steven W. Rhodes
Consumer Bankruptcy Conference
November 11, 2020

Prepared by: Marcy J. Ford, Trott Law, P.C.

CARES Act Moratorium

- **Effective date: March 27, 2020**
- **Mortgage related provisions**
 - **60 Day Moratorium**
 - **CARES Forbearance**
 - **Investor Extensions**
 - **Bankruptcy and Foreclosure Impacts**

CARES Act Forbearance

- Federally backed vs Private Mortgage
- Covid-19 Forbearance Provisions
- Forbearance Resolutions



Shelter in Place Challenges and Solutions

- Remote Working Overnight
- Keys to a Successful Transition
- Productivity in a Remote Environment
- Returning to the Workplace Planning



IMPACT OF THE PANDEMIC ON CONSUMER BANKRUPTCY PRACTICE

© David Wm. Ruskin as presented to the
2020 CBA/ABI Hon. Steven W. Rhodes Veterans Day Consumer Bankruptcy
Conference

Introduction

While we all know that the pandemic has changed many of the dynamics of the practice, current thought on the topic are still evolving. We rushed into working from home, social distancing and constructing safe barriers. The rush is over. We put up with pandemic-related restrictions for the summer; we don't really know what the fall and winter will bring. However, we do know that we need to address the following issues.

Impact of the Pandemic on Consumer Bankruptcy Practice

TECHNOLOGY

- Move it to the cloud!
- Invest in (and learn how to use)
 - Video and audio conferencing
 - Paperless files
 - What to leave in; what to leave out
 - Is there just one file per client or can you look to other sources?
 - Example: use One Note to record transactional history on a case, and use Bestcase's notes section? Or both?



Privacy Practice

TECHNOLOGY

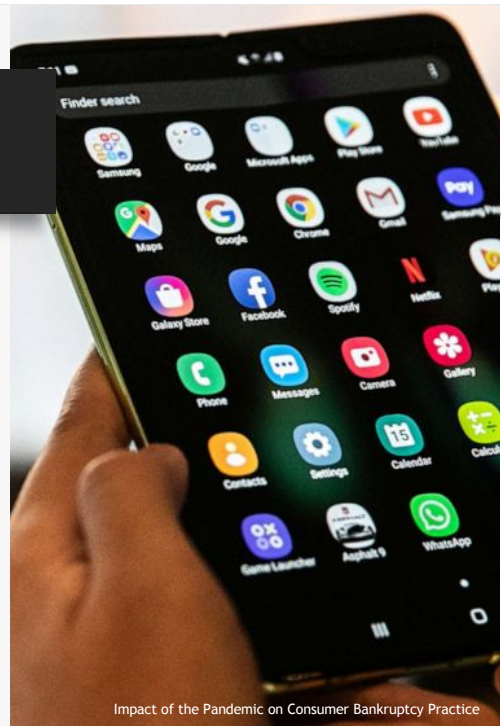


- Email
 - From Google's Privacy Policy as of August 28, 2020 (<https://policies.google.com/privacy?hl=en#infocollect> at 'INFORMATION GOOGLE COLLECTS': ***"We also collect the content you create, upload, or receive from others when using our services. This includes things like email you write and receive, photos and videos you save, docs and spreadsheets you create, and comments you make on YouTube videos."*** (emphasis added)
 - Does this invalidate the Attorney/Client Privilege?

Impact of the Pandemic on Consumer Bankruptcy Practice

TECHNOLOGY

- Remote access of work phone lines
 - Do you mind giving out your personal telephone number from your cell phone or home?
 - Does your business phone system allow for “soft” phones so you can make and receive calls from your work phone?
 - Consider other services that give you a 2nd phone line on your cell phone for work use only, such as <https://www.line2.com/>



Impact of the Pandemic on Consumer Bankruptcy Practice

TECHNOLOGY

- Greater use of bankruptcy preparation software features such as
 - Student loan locator
 - Client notes
 - Storing templates for standard forms, letters and pleadings
- Greater use of related software for bankruptcy and related work
 - Mortgage Loan Modifications: don't bother with USPS, UPS or FedEx. Mail gets lost, takes days to arrive, and you don't know if the lender received it. <https://www.dclmwp.com/Home> (DMM Portal) allows you to transfer the documents immediately via the internet and confirm receipt by the lender. At no cost to the borrower!

Impact of the Pandemic on Consumer Bankruptcy Practice

TECHNOLOGY

- Electronic signatures
 - Which methods are approved on the state and federal level?
 - See Eastern District's Bankruptcy Court Administrative Order 2020-05 dated 3/19/20 <http://www.mieb.uscourts.gov/sites/default/files/general-orders/Admin%20Order%202020-05.pdf>
 - See Governor Whitmer's Executive Order 2020-173 dated 8/28/20 https://content.govdelivery.com/attachments/MIEOG/2020/08/28/file_attachments/1529361/EO%202020-173%20Emerg%20order%20Notaries%20-%20reissue.pdf



Impact of the Pandemic on Consumer Bankruptcy Practice

TECHNOLOGY

- Electronic funds transfers for earnings and payables
- Remember: Alexa is listening!



Impact of the Pandemic on Consumer Bankruptcy Practice

PEOPLE-BASED CONCERNS



- Don't ignore the human aspect of technology
 - How comfortable are staff members using tech in general?
 - Do you have a sufficient variety of software to allow for work from home?
 - But is it overwhelming?
 - Does staff understand what to add to a paperless file, and what not to add?

Impact of the Pandemic on Consumer Bankruptcy Practice

PEOPLE-BASED CONCERNS

- Your staff
 - How severely to impose restrictions on work from home?
 - Isolation issues
 - Staff ability to communicate with each other
 - Does your staff have a clear understanding of what is permitted by you?
 - Put these new processes on "paper" for everyone to see and have a common understanding



Impact of the Pandemic on Consumer Bankruptcy Practice

PEOPLE-BASED CONCERNS



- Setting up the home office
 - Who pays for the internet connection? Is it fast enough?
 - What equipment do you provide
 - Computer
 - Monitors (how many?)
 - Printer
 - Scanner
 - Headphones
 - Internet connection?
 - Post-it Notes, staplers, pads of paper?

PEOPLE-BASED CONCERNS

- Who maintains (and pays to maintain) the equipment?
- Can anyone else in the home use the equipment?
- Liability and insurance issues
- Windows 10 “Quick Assist” app!



Impact of the Pandemic on Consumer Bankruptcy Practice

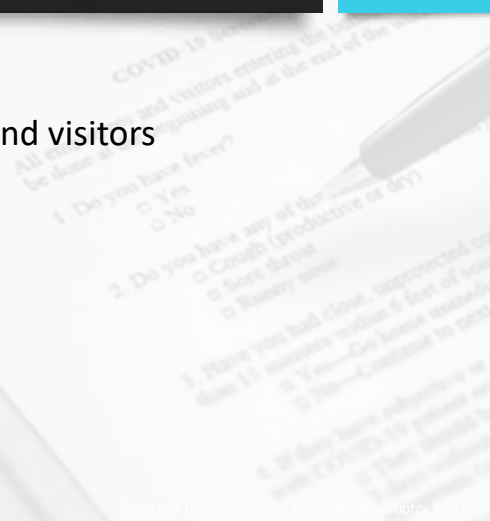
PEOPLE-BASED CONCERNS

- What is the arc to Work From Home?
 - Initial delight (“look at all the time I save not driving to the office!”)
 - Settling into a routine (“I could get used to this”)
 - “The kids demand too much of my time (and my spouse isn’t helping)”
 - “I’m going out; who is going to know?”
 - “As long as I get my work done, why does the boss care?”
 - “What’s the phone number for the Department of Labor?”



PEOPLE-BASED CONCERNS

- Covid-19 screening apps for on-site staff and visitors (examples)
 - <https://preworkscreen.com/>
 - <https://go-evo.com/covid-19/>
 - <https://www.entrsafe.app/>



PEOPLE-BASED CONCERNS

- Your clients
 - How comfortable are they with technology?
 - Mention to staff to look for these issues
 - Direct staff to assist clients
 - Do they prefer to come to the office or talk/video with you?
 - How will they get you the supporting documents you need?
 - Can they scan and email?
 - Should you consider a web portal?



Impact of the Pandemic on Consumer Bankruptcy Practice

PEOPLE-BASED CONCERNS



- Always be mindful of privacy issues and personally identifiable information (PII)
 - Not just Alexa, but “flatten” PDF documents
 - Protect documents with passwords before sending. Provide the password in a separate email

Impact of the Pandemic on Consumer Bankruptcy Practice

THE PHYSICAL OFFICE

- See https://www.michbar.org/file/generalinfo/pdfs/Reopening_Checklists.pdf
- Business Continuity for Law Offices in the Face of Coronavirus: a free on-demand webinar from the State Bar of Michigan <https://www.michbar.org/pmrc/webinars>
- Working Remotely: a wide-ranging discussion from the State Bar of Michigan covering the important aspects of the topic <https://www.michbar.org/pmrc/workingremotely>
- Text of Documents on Coronavirus of Importance to the Legal Community <https://www.michbar.org/generalinfo/COVID-19-emergencyorders>
- Oakland County Covid-19 Response page: <https://www.oakgov.com/covid/Pages/default.aspx>

Impact of the Pandemic on Consumer Bankruptcy Practice

WHAT WILL “WORK FROM HOME 2.0” LOOK LIKE?

- WFH has gained wide-spread acceptance by business managers and employees incredibly fast due to the pandemic
- WFH is likely to continue in various formats considering
 - Health issues related to the pandemic are likely to linger for a few years
 - Reducing physical office size adds to profitability
 - It's a perk that's becoming commonplace that will help attract and keep talent
 - Managers will learn that staff productivity increases with WFH (if they can loosen the noose)
- How will you slip and slide into the future?

Impact of the Pandemic on Consumer Bankruptcy Practice

Concluding Statement

Some of the changes made in response to the pandemic will remain with us for years to come, by choice or otherwise. Which changes should we “cherry pick”?



Business Implications on the Consumer Bankruptcy Practice Arising from COVID-19 and the Moratoriums on Evictions and Foreclosure

**Honorable Steven W. Rhodes Consumer
Bankruptcy Conference**

November 11, 2020



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COVID-19

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ECONOMY – COVID 19

GROSS DOMESTIC PRODUCT (GDP) SECOND QUARTER 2020	BANKRUPTCY FILINGS
31.4% ↓	27% ↓

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The Big Three – Consumer Debt

End of 1st Quarter 2020

The Big Three - \$14.3 trillion

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Mortgage Forbearance

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CARES ACT FORBEARANCE – EXTENDED THROUGH DECEMBER 31, 2020

- Passed March 2020
- One-year forbearances (6 months + 6 month extension) – Expire Spring/Summer 2021
- Four Million Loans in Forbearance
- Uncertain as to Mortgagor Repayment Plans
- Potential of Second Wave over the Fall/Winter
- Potential of Additional Assistance from Congress

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EVICTIION MORATORIUM

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CDC EVICTION MORATORIUM

- Protection ends December 31, 2020 (unless extended!)
- Declaration must be made by each adult on the Rental Agreement
- Income Cap - \$99,000 single, \$198,000 married filing joint – “must affirm expectation is less”
- CDC could extend
- Congress could extend Federal protection on federally backed mortgaged property
- No protections contemplated once moratorium protection ends

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What is the Best Play?

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CONSERVATIVE APPROACH

- Cut Expense
- Reduce Marketing
- Lay off Non-essential Staff
- Ramp Back up When Volume Increases

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MORE AGGRESSIVE APPROACH

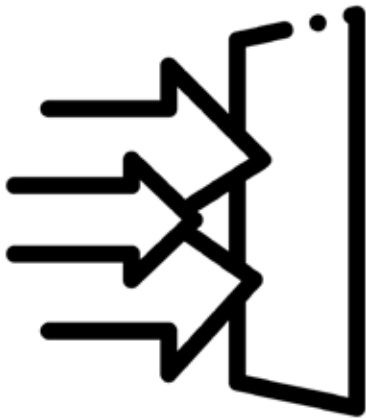
- Keep Staff intact so ready to handle the volume
- Increase marketing budget to capture more of limited market and position for surge
- Consider alternate marketing strategies – Broadcast v. Internet

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Listen to the Advice we Give!

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In the end, Consumer debt
levels will mean people
need our help!

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COVID-19 AND BANKRUPTCY

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**THE EFFECTS OF THE COVID-19 PANDEMIC ON THE
BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF MICHIGAN**

By: Bankruptcy Judge Phillip J. Shefferly¹

Introduction

The public health crisis of COVID-19 has brought an unprecedented challenge to the judiciary's mission to serve the public. The suddenness of its arrival and its widespread transmission placed a premium on the judiciary's ability to react quickly and with flexibility. Because bankruptcy courts serve people and businesses who are already in distress, with time sensitive problems, this challenge is even greater for bankruptcy courts. This goes double for a high-volume bankruptcy court like the Eastern District of Michigan. Here are some of the ways our bankruptcy community and court have been affected, the procedures we have adopted to enable our court to continue to serve the public, and some observations about the future.

Procedures put in place to deal with the pandemic

Much like other courts and public institutions, we followed the reporting on the virus in early 2020 and watched with alarm as the virus soon grew into a pandemic. Our court's actions rapidly accelerated as we learned more about the virus.

The first formal step our court took to address the pandemic was on March 12, 2020 when we posted a notice that court security officers would now screen individuals coming to court to inquire whether they had been diagnosed with the virus or had contact with anyone who had been diagnosed with the virus; whether they were experiencing any symptoms of the virus such as fever, coughing or shortness of breath; whether they had been asked by any doctor, hospital or health agency to self-quarantine; or whether they had travelled to or had recent contact with anyone who had travelled to certain countries that had been identified by the Center for Disease Control as "hot spots" for the transmission of the virus. Individuals who met any of these criteria would not be permitted to enter the courthouse.

It didn't take long for us to realize that we would have to do much more to protect the health of our employees, the parties and attorneys who come to our court, and the general public.

¹ Judge Shefferly was appointed to the bench in 2003 and served as its chief judge for 11 years until April 25, 2020, when his term expired and a new chief judge was appointed. Judge Shefferly wrote this article while he was still chief judge during the early stages of the COVID-19 public health crisis for publication in the Norton Bankruptcy Law Journal for June, 2020.

On March 16, 2020, we entered an administrative order that adopted detailed procedures for how our court would operate during the pandemic. This order began by stating that the court would continue to provide all its services to the public. The order provided that all hearings would be held by telephone and specified that each judge in our court would publish on the court's website the telephone number and arrangements to participate in a telephone hearing before that judge. Because the court's electronic case filing system is only available to parties represented by an attorney, the order implemented a drop box system for pro se parties to file traditional paper filings with the court in lieu of physically bringing them to the court's intake desk.

On the same day that the court entered this administrative order, we authorized all employees to begin working remotely. Our court is fortunate to have a very dedicated and forward-thinking committee for the Continuity of Operations Plan (COOP). Over the years, our COOP committee prepared our court to conduct virtually all the court's operations remotely. Our employees were already trained to telework, and several of them already did so on a limited basis before the pandemic. This preparation enabled our court to quickly transition to remote operations. Within a few days, all employees were working remotely. Our court's IT personnel were able to ensure a high-quality digital recording of all telephone hearings without having any court personnel on site at the courthouse.

But we soon learned that this pandemic required us to be nimble and bold enough to make adjustments along the way on the fly.

On March 19, 2020, to avoid the health risk that attorneys and their clients would take if they met in person to sign documents, we issued another administrative order. In this order we temporarily suspended the requirement in our court's local rules that an attorney electronically filing a document that is required to be signed by another individual must obtain that individual's original wet signature on the document before filing it. This order now permits the attorney to file the document without an original wet signature so long as the attorney first does either one of two things: obtain the individual's digital signature on the document via any commercially available digitally signed document, or obtain express written permission from the individual, via email or otherwise, to affix the individual's electronic signature to the document filed with the court.

Realizing that we had made many operational changes in a very short time, our clerk created a new section on our court's website that is devoted entirely to information regarding the court's operations during the pandemic. This section enables the reader to find in one prominently displayed place all the court's administrative orders, notices and other court related information concerning the pandemic, in an organized way with links to other relevant resources.

Special procedures for pro se parties

Adequately serving the court's pro se parties required more action. On March 23, 2020, Michigan's governor issued an executive order that greatly restricted travel in Michigan, essentially precluding pro se parties from bringing traditional paper filings to the courthouse, either to intake or even to a drop box. Further, by this time, regular mail had ground to a halt. Because we have so many pro se parties in our court, something else had to be done to keep the court accessible to them.

On April 3, 2020, our clerk rolled out a web-based program that any individual with access to a computer could use to file documents with the court. The acronym for the program, PEDUP, stands for Pro Se Electronic Document Upload Program. Unlike the court's established electronic case filing system, PEDUP is only available for use by parties who are not represented by an attorney. Our IT department deserves enormous credit for developing this program, especially in such a short period of time. It is easy to use and the court has a help desk with published telephone numbers for pro se parties to call for real time assistance. The program allows a pro se party to file up to five documents with each submission so that each document does not have to be filed by a separate submission.

The PEDUP program is proving to be very successful. During April alone, pro se parties made over 200 submissions under PEDUP, including voluntary petitions, schedules and motions.

Current state of court operations

On April 6, 2020 we entered a third administrative order, this time extending indefinitely the procedures described above.

The good news is that our court has been able by these actions to continue to receive all filings, enter all orders and conduct all hearings by telephone. The hearings are held in accordance with the court's regular calendar, so that there is no delay as a result of the pandemic. The judges, the court personnel, the attorneys, and even pro se parties, have all become accustomed to the telephone hearings, and they are conducted in an orderly way, with the presiding judge directing traffic on the telephone to ensure that participants do not interrupt one another or speak at the same time.

The one exception to business as usual is the holding of trials. Thus far, the judges in our court have not conducted any trials, but instead have adjourned them for the time being. But the continuation of the pandemic suggests that there will soon come a time when a given trial may no longer be postponed and will have to be held. We are presently experimenting with several platforms to conduct video trials and expect to soon decide which platform we will use to conduct video trials.

Effect of the pandemic on new case filings

We are now and historically have been for many years one of the highest volume bankruptcy courts in the country. But there is no doubt that this pandemic has caused a drastic reduction in our case filings. Through the first three months of 2020, the filings in our court were running slightly above 2019. Then the bottom fell out. In April, 2020, 1,104 new cases were filed in our court. That is more than a 55% reduction from April, 2019, when 2,313 new cases were filed in our court. So far, May is continuing the trend. And this reduction is across the board – all chapters, business and consumer.

Hard to tell this soon whether this reduction will continue in the short term, but even if it does, it seems unlikely to last for long. The current legally imposed moratoriums on foreclosures and evictions will eventually come to an end, as will some of the relief granted by the CARES Act. Unfortunately, many businesses that are currently shut down by the pandemic will likely never reopen, and many of those that do will struggle to survive. Even the most optimistic projections agree that the massive numbers of individuals who have become unemployed will take a long time to regain employment. We fully expect the case filings in our court, both business and consumer, to spike up by late summer and early fall as the long-term effects of the pandemic begin to be better understood.

Effect of the pandemic on pending cases

Even though it is too soon to assemble any meaningful empirical data, here are some observable trends taking place in our court's pending cases. On the business side, lenders have been more willing to extend covenants and payment terms, forbear from enforcing remedies, and agree to extensions of deadlines for filing and confirming plans of reorganization. At least anecdotally, it appears that creditors and debtors alike are trying to be reasonable and cooperate to get through this extraordinary time together with a minimum amount of litigation.

On the consumer side, we are seeing similar trends. Fewer motions to lift the automatic stay and more stipulations for extensions and adjournments. Most notable, in chapter 13 cases with confirmed plans, we are seeing large numbers of proposed plan modifications. Not hard to see why. Wage orders do not have much use in making plan payments where a debtor is suddenly laid off from their job. The court has been liberal in suspending existing wage orders and allowing modifications of plans. However, the court has continued to insist that debtors seeking plan modifications do so in the manner prescribed by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

Other thoughts

The last point in the previous paragraph leads to another thought. Whenever an emergency happens that demands immediate attention and resources, one of the temptations that occurs is to overlook existing laws, procedures and practices in favor of “just doing something” to tackle the emergency. While the pandemic is certainly a serious, widespread emergency that demands immediate attention by bankruptcy courts, that fact does not suggest that it is prudent to disregard established laws, rules and procedures.

Bankruptcy courts must be proactive and flexible in finding ways to fulfill their mission in the midst of an emergency – in this case the pandemic. Holding court remotely, taking advantage of new technologies, and finding new ways to make the court more accessible are imperative. But it does not follow from that proposition that bankruptcy courts must deviate from existing laws and established procedures, even when motivated by good intentions to help those most harmed by the pandemic. Existing laws and established procedures are the product of careful thought and deliberation. They are best seen as tools rather than impediments for a bankruptcy court to dispense justice expeditiously in times of crisis. Rushing to create new and temporary procedures that are at odds with existing laws and established procedures will invariably lead to trouble when the emergency subsides. Better to create only new procedural efficiencies in times of crisis that are compatible with existing laws and established procedures so as to avoid a different set of problems down the road after the emergency is over.

It is difficult to predict with any certainty the long-term effects of the pandemic. However, in our district, where the population historically suffers more acutely than much of the country during troubled times, it is probable that fewer chapter 11 and chapter 13 plans will be confirmed because of feasibility concerns, and those that are confirmed will struggle to complete. The unfortunate consequence will likely be a loss of businesses, particularly small businesses, and, in individual cases, a loss of ownership of homes, cars and other property in a population that can ill afford it. More chapter 7’s seem likely.

Our hope is that creditors and debtors will be guided by compassion and reason in seeking solutions to the financial problems caused by the pandemic. Our commitment is to do what it takes to ensure meaningful access to our court to help attain those solutions.²

May 7, 2020

² The administrative orders and notices referred to in this article can all be found on our court’s website at www.mieb.uscourts.gov, under the section titled “IMPORTANT INFORMATION Regarding Court Operations During COVID-19 Pandemic.”

SUBSTANTIVE CHANGES TO PRACTICE AS A RESULT OF COVID-19,
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CARES Act Moratoria

The CARES Act, effective March 27, 2020, provided a 60 day foreclosure moratorium starting **March 18, 2020**, for federally backed mortgage loans. The Act, while providing a plethora of other relief, mirrored the earlier foreclosure suspensions that HUD, VA, USDA, Freddie Mac, and Fannie Mae had implemented. The CARES Act moratoria ended in May and has not been extended, however all of the federal housing agencies have individually extended the foreclosure and eviction moratoria for federally backed mortgage loans through December 31, 2020. At this time many private loan investors have followed the lead of the federal agencies, although that is subject to change at the direction of the investor. Additionally, foreclosure is allowed for all investors/insurers on all properties that are deemed vacant and abandoned.

As a result of the moratoria foreclosures and evictions have all but ended while the health and economic crisis continue. This situation has had a direct impact on bankruptcy filings and actions. Case filings are now down 27% nationally and down 26% (Chapter 13s filings down 60%) in Michigan from one year ago. While it is presumed that there is now a substantial backlog of defaults that could result in foreclosure actions and then bankruptcy filings, this backlog will be impacted by the mortgage forbearance, deferral, and loss mitigation programs. As reported by Core Logic, as of June 7.1% of mortgages were 30 days or more past due. This was a 3% increase from June 2019. Early stage delinquencies (30-59 days) were actually down .3% from June 2019 and those 60 to 89 days delinquent were up 1.8%. Serious delinquency (over 90 days past due) were 3.4%, up 1.3%, a 5 year high. Foreclosure inventory however was down .1%. This could be explained by forbearances, strong real-estate sales market, and the cancellation of some actions by loan investors.

CARES Forbearance

The CARES Act provides that all borrowers with federally backed mortgage

loans who are Covid-19 impacted can receive a mortgage forbearance. Period. No supporting documentation is required and the request does need to be in writing. Borrowers may receive up to a 6 month forbearance with an extension for an additional 6 months. The time period to request an original forbearance ends at the end 2020. Borrowers who wait and do not request a forbearance may be eligible for other programs, but absent an extension or new relief act, a Covid-19 forbearance will not be available.

During the forbearance period there is not a payment change, but rather a delay in payments being required. At the end of the Covid-19 forbearance period the forborne payments are due in full, however the agencies have again developed a waterfall option that may allow a cure in a manner other than in a lump sum. Options include repayment in full, a repayment plan, a deferral to the end of the loan period, plan extension/modification, partial claims (second interest free mortgage due at the end of the loan/pay-off), or a loan modification, to name a few. There are qualifiers for many of the options and all borrowers will not necessarily qualify for each option. For example, if a loan had a contractual due date prior to 1/1/2020, a deferral may not be an option for all investors. This will impact many debtors in a chapter 13 bankruptcy where arrears had not yet been paid in full. Additionally, depending on the agency, where the deferral option is possible, only the principal and interest will be deferred, escrow may need to be paid over up to 60 months. This will mean that some delinquencies may survive discharge.

While most servicers/banks are choosing to file a notice of forbearance where same has been elected, others may do so only where local court rules require. Further, it is possible that the resolution of the forbearance, once it expires, will need formal court approval. Finally, it may be the position of some that all notices are the responsibility of the debtor and their counsel, and not the servicer.

Shelter in Place Challenges and Solutions

Almost overnight practitioners were forced to implement remote work policies and practices to comply with the Shelter in Place Order. Additionally, employers were dealing with workers who were ill, employees taking care of family members, serving as home educators, etc. The courts and trustees were dealing with the same issues. Those who survived *successfully* likely had an emergency and remote work plan in

place that included many of the following:

- Robust security policies, both written and built into their case management system (to protect borrower data)
- Remote user agreements
- Clearly written and tested VPN or other remote access instructions
- Staff pre-trained on remote access
- Paperless work processes
- Secure multi factor connections
- Ability to monitor state, federal, court policies and directives
- Strong financial controls

Looking Forward

In many instances, no longer can managers/owners readily identify whether staff is actively involved in productive and revenue generating work. This is not to suggest that employees are willfully taking advantage of remote work or not working hard. Productivity tracking in a remote environment is simply difficult despite the quality and dedication of staff, unless systems were designed with remote working in mind. First, there is likely a natural adjustment to working from home and the difficulty in tuning out family members, pets, technologies, etc. Running for a cup of coffee can also now mean throwing in a load of wash or playing with the pets, who normally sleep all day without interruption. Additionally, overloaded internet lines, conference call lines, and lack of quality technology (outdated computers or single monitors) have likely resulted in less productivity for many in the remote workforce. Finally, sharing the home computer with children or other remote workers may cause the workday itself to turn upside down. While financial and security risks need to be taken into account, employers may wish to consider some of the following options:

- Allowing a monthly stipend for stronger internet connectivity
- Allowing staff to take office equipment home
- Providing cables and monitors
- Flexible work schedules
- Rotating staff (safely) back into the office

Once technology issues are resolved, firms need to make sure (or look for enhancements) that their case management system/software allows for productivity tracking. Management needs to pull reports, reassign work,

provide remote training/coaching, and track deadlines in order to avoid costly mistakes. Where necessary, coaching sessions should occur over a secure visual software platform and documentation should be processed and saved in a secure electronic manner. Avoiding paper/printing in the remote work environment is not only essential for privacy but may be a requirement of your insurance provider.

While many of us may plan to work remotely for the foreseeable future, it is not too early to be planning for a safe return to your office environment. Just like our school and court systems, returning to “regular” will be challenging and involve false starts. And, as of now, there is no employer liability protection for workers who may be exposed to and contract Covid-19 at the workplace. Additionally, the cost of office cleaning per CDC guidelines after even a single exposure will be both expensive and again impact your workforce and possibly your work. Work spaces need to be reconfigured so that workers are 6 feet apart, congregation in breakrooms and copy machines is eliminated, and the proverbial water cooler and office coffee machine temporarily or permanently eliminated. Employees should be required to strictly comply with a health report daily before entering the building, report all air travel, possible virus contact, wear masks, and frequently wash hands and take advantage of gloves, masks, and sanitizer. As an example, Trott Law’s Return to the Office Plan includes the following documents:

- SAR-Cov-2 Preparedness Response Plan Evaluating Risk
- Screening Protocol
- Best Practices Adopted and Required Response to Covid-19
- Landlord Building Guidelines
- Response and Notification Plan for Confirmed/Exposed Cases
- Covid-19 Cleaning Plan (post positive)

There is no doubt that the office environment, worker expectations, and workplace safety will see long lasting changes.

**COVID-19 BUSINESS IMPLICATIONS ON THE CONSUMER BANKRUPTCY
PRACTICE ARISING FROM COVID-19 AND THE MORATORIUMS
ON EVICTION AND FORECLOSURE**

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One thing is certain – we are all laboring through an unprecedented event during unprecedented times. The economic impact of COVID-19 is mind boggling to say the least. At first blush, the shut-down and the rise in unemployment from historically low levels to highs equivalent to the Great Depression created the prospect of mass consumer filings for bankruptcy relief. We are now nine months into COVID-19. Thus far, with the support of federal and state government assistance, bankruptcy filings have not increased – in fact, they have decreased from last year by 27% nationally and by 26% in Michigan, with Chapter 13 cases down 60%. A combination of the PPP and EIDL loans for business, the PUD Federal \$600 per week unemployment supplement (as reduced and subject to revision based on when and if Congress acts) the stimulus checks and moratoriums on foreclosure and eviction have slowed people from seeking bankruptcy relief.

Prior to COVID-19, anticipation of an increase in bankruptcy filings existed based on consumer debt rising to all-time highs, exceeding the levels at the beginning of the Great Recession. The Big Three in consumer debt – Credit Card Debt, Auto Loans and Student Loan Debt reached \$14.3 trillion at the end of the first quarter of 2020, exceeding the \$12.68 trillion in the third quarter of 2008, at the precipice of the Great Recession.³ On top of this, the US Economy, up to COVID-19, had sustained a period of nearly 11 years without a recession; something that over the course of the last five years most bankruptcy lawyers found to be mystifying and

³ Federal Reserve Bank of New York, *Pre-COVID-19 Data Shows Total Household Debt Increased in Q1 2020* (May 5, 2020).

discerning from the standpoint of their practice goals. Given this environment, it is a realistic expectation that the need and demand for bankruptcy protection was on the horizon prior to COVID-19, and the ultimate impact of COVID-19 will be to greatly enhance that need and demand. For practitioners, the critical question presented is what steps should be taken now with demand low but anticipated to climb?

At present, the mortgage forbearance under the CARES Act has been extended through 2020. For those with federally backed mortgages, mortgagors are permitted a six-month forbearance, plus an extension of an additional six months. For mortgagors that opted to seek forbearance shortly after the CARES Act was passed in March 2020, the one-year forbearance period will begin to expire in late Spring and the Summer of 2021. There are presently over four million loans in forbearance.⁴ When forbearance ends, it is yet unclear to the extent the lending agencies will permit an extended cure or catchup period to resolve the arrearage that accumulated during the forbearance. Adding to this uncertainty, it is unknown whether Congress will extend benefits, forbearance on mortgages and moratoria on foreclosures and evictions based on the current COVID-19 trends. We also don't know if the U.S. will face a Second Wave of the virus during the Winter and early Spring, which would likely cause the 2021 Congress and Administration to increase assistance to consumers and businesses – both monetarily and via extended moratoria on foreclosures and evictions.

Renters are presently afforded protection from eviction by the Centers for Disease Control and Prevention (CDC) through December 31, 2020. Under the CDC guidelines a declaration must be made by each adult on the rental agreement affirming they meet the eligibility requirements. Among the six requirements of the declaration, the declarant must affirm that they expect to earn

⁴ Dsnews.com, *Preparing for the End of Forbearance* (August 11, 2020)

no more than \$99,000 in annual income for calendar year 2020 (\$198,000, if married filing joint), that they have used best efforts to obtain all available government assistance for rent or housing and that they are unable to make the full rent due to a substantial loss of household income, loss of compensable hours of work or wages, lay-offs, or extraordinary out of pocket medical expenses.⁵ In Michigan, the Supreme Court issued a Memorandum of FAQs on September 3, 2020 addressing the CDC Order. The Court has indicated the CDC declaration form must be provided to the Landlord or the person who has the right to evict them. The CDC Order does not effect the tenant's contractual obligations and it does not provide any forbearance after the CDC Order expires.

So, what is a bankruptcy practitioner to do facing so much uncertainty? Do you approach the matter conservatively by reducing overhead, limiting marketing expenditures and wait until volume increases and then jump in with vigor, by hiring additional staff and spending necessary marketing dollars to capture market share? Alternatively, do you keep your staff intact so you are able to handle the increased volume in a competent and effective manner? Do you increase your marketing expenditures now to capture a greater share of the decreased market for cases and to gain market awareness when the surge arises? Do you shift your marketing dollars from internet based marketing to broadcast based on the notion that a larger percentage of the public is suffering from COVID-19 and will need services in the future, whereas Internet based advertising tends to be more immediate need oriented?

These are the questions I have asked myself daily since March 2020. I believe they are good questions; but without the benefit of hindsight, there are no right or wrong answers. The course to pursue depends not only on the factors driven by the Pandemic but upon the environment

⁵ <https://www.cdc.gov/coronavirus/2019-ncov/downloads/declaration-form.pdf>

of your practice. The media often laments on the high percentage of Americans who are unable to cover the cost of a \$400 emergency. The same analysis applies to your practice. Common business sense indicates you should have cash reserves, a bank line of credit and staying power during a short to mid-term downswing in case volume. While this may be logical it is not a staple in our industry. Many law firms distribute all profit each year, always leaving cash reserves low and in a consistent haphazard scramble for cash. The firm size is not the telling factor, it is the availability of cash reserves and bank financing that is a necessary component if you wish to maintain staff and marketing expenditures premised on the assumption that doing so will yield a better future return than downsizing and ramping up when the time comes. Decisions are easy if you lack the reserves. In that situation, you must scale back and then ramp up when the business is there. The difficult decision is for the practitioner who has the reserves. The decision, like all business decisions, is risk versus reward. Will the risk of carrying excess staff and marketing in the low filing period yield a gain in the form of a competitive advantage when the volume returns?

The course to pursue will turn on your perception of the unknown factors. Suppose COVID-19 fades away (“it just disappears”) in a manner that permits the economy to recover quickly. It is possible that those who have sustained themselves with the benefit of the government’s assistance will not be further enmeshed with debt and can avoid the need and benefit of debt elimination offered by bankruptcy. If the mortgage industry and government agencies together advance programs that allow long term opportunities for mortgagors who elected forbearance to repay the arrearage in an affordable manner, then the anticipated rise in Chapter 13 filings will not occur. The list of factors that need to be assessed goes on and on.

To assess the factors, you need to keep an eye on the available data as it is published. Monitor the status of consumer debt as to whether it is increasing or decreasing, and whether the

credit card industry and small business subprime lending markets are scaling back on available credit. Those were key “tells” from the Financial Crisis and Great Recession. Recent published stories indicate that consumers paid down their debt during the second quarter of this year, utilizing the funds derived from the stimulus, PUD and unemployment relief during a time where the opportunity to spend decreased due to activity restrictions dictated by the Pandemic. The Federal Reserve Bank of New York indicated on August 6, 2020, that total household debt decreased in the second quarter of 2020 by \$34 billion to \$14.27 trillion. Of the decline, credit card balances accounted for a \$76 billion reduction (which was offset by an increase in mortgage debt to arrive at the \$34 billion aggregate decline)⁶. While this may mean that the aggregate debt is reduced, it does not mean that the average consumer who has reduced their credit card debt has created a reserve fund to cover expenses during a period of unemployment. The consumer did what they thought was the smart thing – reduce debt and save paying the interest. If you have stable income and a budget that allows you to do so that is good advice. Amidst the Pandemic with job security being the number one unknown, that strategy should be weighed against the need to preserve cash in the event the credit card market cuts back available credit. It is probably a safe assumption the consuming public that paid down their debt during COVID-19 are still without cash reserves. If this is true and there is a reduction of available credit, filings will soar without regard to foreclosures and evictions. There are other metrics to watch other than a reduction in available credit. An increase in the default rate on credit card debt indicates that consumers are exhausting the credit that was available to them - which makes the filing decision for them much easier.

To monitor the mortgage/foreclosure market, you should identify key online sites that

⁶ Federal Reserve Bank of New York *Total Household Debt Decreased in Q2 2020* (August 6, 2020).

publish daily data about the mortgage industry. Typically, the data is readily available on both the national and state levels and this is where you can try and stay ahead of the pack as to formulating your view on how the market is moving. Once the CDC eviction moratorium expires, eviction protection and data must be evaluated on a state to state basis; so, the monitoring task should look to local media sources.

COVID-19 presents us with a test of business acumen. Adversity creates opportunity and the test for all us is to identify the resources we have, the opportunities as they arise and our willingness to take risk with the knowledge that none of us are capable of predicting the future or guaranteeing our chosen course is the right option. Most important, stay safe and protect your family.

IMPACT OF THE PANDEMIC ON CONSUMER BANKRUPTCY PRACTICE

By David Wm. Ruskin as presented to the

2020 CBA/ABI Hon. Steven W. Rhodes Veterans Day Consumer Bankruptcy Conference

Introduction: While we all know that the pandemic has changed many of the dynamics of the practice, current thought on the topic are still evolving. We rushed into working from home, social distancing and constructing safe barriers. The rush is over. We put up with pandemic-related restrictions for the summer; we don't really know what the fall and winter will bring. However, we do know that we need to address the following issues.

TECHNOLOGY

- Move it to the cloud!
- Invest in (and learn how to use)
 - Video and audio conferencing
 - Paperless files
 - What to leave in; what to leave out
 - Is there just one file per client or can you look to other sources?
 - Example: use One Note to record transactional history on a case, and use Bestcase's notes section? Or both?
 - Email
 - from Google's Privacy Policy as of August 28, 2020 (<https://policies.google.com/privacy?hl=en#infocollect> at 'INFORMATION GOOGLE COLLECTS': "**We also collect the content you create, upload, or receive from others when using our services. This includes things like email you write and receive, photos and videos you save, docs and spreadsheets you create, and comments you make on YouTube videos.**" (emphasis added)
 - Does this invalidate the Attorney/Client Privilege?
 - Remote access of work phone lines
 - Do you mind giving out your personal telephone number from your cell phone or home?
 - Does your business phone system allow for "soft" phones so you can make and receive calls from your work phone?
 - Consider other services that give you a 2nd phone line on your cell phone for work use only, such as <https://www.line2.com/>
 - Greater use of bankruptcy preparation software features such as
 - Student loan locator
 - Client notes
 - Storing templates for standard forms, letters and pleadings
 - Greater use of related software for bankruptcy and related work
 - Mortgage Loan Modifications: don't bother with USPS, UPS or FedEx. Mail gets lost, takes days to arrive, and you don't know if the lender received it. <https://www.dclmwp.com/Home> (DMM Portal) allows you to transfer the

documents immediately via the internet and confirm receipt by the lender. At no cost to the borrower!

- Electronic signatures
 - Which methods are approved on the state and federal level?
 - See Eastern District's Bankruptcy Court Administrative Order 2020-05 dated 3/19/20 <http://www.mieb.uscourts.gov/sites/default/files/general-ordes/Admin%20Order%202020-05.pdf>
 - See Governor Whitmer's Executive Order 2020-173 dated 8/28/20 https://content.govdelivery.com/attachments/MIEOG/2020/08/28/file_attachments/1529361/EO%202020-173%20Emerg%20order%20Notaries%20-%20reissue.pdf
- Electronic funds transfers for earnings and payables
- Remember: Alexa is listening!

PEOPLE-BASED CONCERNS

- Don't ignore the human aspect of technology
 - How comfortable are staff members using tech in general?
 - Do you have a sufficient variety of software to allow for work from home?
 - But is it overwhelming?
 - Does staff understand what to add to a paperless file, and what not to add?
- Your staff
 - how severely to impose restrictions on work from home?
 - Isolation issues
 - Staff ability to communicate with each other
 - Does your staff have a clear understanding of what is permitted by you?
 - Put these new processes on "paper" for everyone to see and have a common understanding
- Setting up the home office
 - Who pays for the internet connection? Is it fast enough?
 - What equipment do you provide
 - Computer
 - Monitors (how many?)
 - Printer
 - Scanner
 - Headphones

- Internet connection?
 - Post-it Notes, staplers, pads of paper?
 - Who maintains (and pays to maintain) the equipment?
 - Can anyone else in the home use the equipment?
 - Liability and insurance issues
 - Windows 10 “Quick Assist” app!
- What is the arc to Work From Home?
 - Initial delight (“look at all the time I save not driving to the office!”)
 - Settling into a routine (“I could get used to this”)
 - The kids demand too much of my time (“and my spouse isn’t helping”)
 - I’m going out; who is going to know?
 - As long as I get my work done, why does the boss care?
 - What’s the phone number for the Department of Labor?
- Covid-19 screening apps for on-site staff and visitors (examples)
 - <https://preworkscreen.com/>
 - <https://go-evo.com/covid-19/>
 - <https://www.entrsafe.app/>
- Your clients
 - How comfortable are they with technology?
 - Mention to staff to look for these issues
 - Direct staff to assist clients
 - Do they prefer to come to the office or talk/video with you?
 - How will they get you the supporting documents you need?
 - Can they scan and email?
 - Should you consider a web portal?
 - Always be mindful of privacy issues and personally identifiable information (PII)
 - Not just Alexa, but “flatten” PDF documents
 - Protect documents with passwords before sending. Provide the password in a separate email

THE PHYSICAL OFFICE

- See https://www.michbar.org/file/generalinfo/pdfs/Reopening_Checklists.pdf
- Business Continuity for Law Offices in the Face of Coronavirus: a free on-demand webinar from the State Bar of Michigan <https://www.michbar.org/pmrc/webinars>
- Working Remotely: a wide-ranging discussion from the State Bar of Michigan covering the important aspects of the topic <https://www.michbar.org/pmrc/workingremotely>
- Text of Documents on Coronavirus of Importance to the Legal Community <https://www.michbar.org/generalinfo/COVID-19-emergencyorders>
- Oakland County Covid-19 Response page: <https://www.oakgov.com/covid/Pages/default.aspx>

WHAT WILL “WORK FROM HOME 2.0” LOOK LIKE? (Or, how are you going to keep ‘em down on the farm once they’ve been to the big city?)

- WFH has gained wide-spread acceptance by business managers and employees incredibly fast due to the pandemic
- WFH is likely to continue in various formats considering
 - Health issues related to the pandemic are likely to linger for a few years
 - Reducing physical office size adds to profitability
 - It’s a perk that’s becoming commonplace that will help attract and keep talent
 - Managers will learn that staff productivity increases with WFH (if they can loosen the noose)
- How will you slip and slide into the future?

Concluding “No Duh!” Statement: Some of the changes made in response to the pandemic will remain with us for years to come, by choice or otherwise. Which changes should we “cherry pick”?