



AMERICAN  
BANKRUPTCY  
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# 2021 Rocky Mountain Bankruptcy Virtual Conference

## Judicial Roundtable

**Kyler K. Burgi, Moderator**

*Davis Graham & Stubbs LLP | Denver*

**Hon. Kevin R. Anderson**

*U.S. Bankruptcy Court (D. Utah) | Salt Lake City*

**Hon. Elizabeth E. Brown**

*U.S. Bankruptcy Court (D. Colo.) | Denver*

**Hon. Terrence L. Michael**

*U.S. Bankruptcy Court (N.D. Okla.) | Tulsa*

**Hon. Cathleen D. Parker**

*U.S. Bankruptcy Court (D. Wyo.) | Cheyenne*

**Hon. Michael E. Romero**

*U.S. Bankruptcy Court (D. Colo.) | Denver*

**Hon. Joseph G. Rosania, Jr.**

*U.S. Bankruptcy Court (D. Colo.) | Denver*

**Hon. William T. Thurman**

*U.S. Bankruptcy Court (D. Utah) | Salt Lake City*

**Hon. Kimberley H. Tyson**

*U.S. Bankruptcy Court (D. Colo.) | Denver*

## Bankruptcy Venue – Here We Go Again!

*Written by:  
Ed Flynn<sup>1</sup>*

*American Bankruptcy Institute; Alexandria, Va.*

Bankruptcy venue is controlled by Section 1408 of Title 28. In general, consumer debtors file in the federal district in which they live. Business debtors often have at least several possible places where they can file, including the state of incorporation, the location of principal assets, or in the district in which an affiliated company has already filed. In actual practice, this has meant that many of the largest business cases have been filed in the Southern District of New York (New York City) and the District of Delaware. In recent years these districts account about two-thirds of filings by large publicly held corporations.

Over the years there have been numerous efforts to amend this Section 1408 to require corporations to file in the district where their principal assets or principal place of doing business is located. The current proposal is contained in H.R. 4421.<sup>2</sup> This bill has been endorsed by 163 current and former bankruptcy judges<sup>3</sup> and 42 state attorneys general.<sup>4</sup>

Proponents of venue reform argue that the current system allows forum-shopping and that cases are now filed in locations that have little connection to the debtor and its' employees and creditors. Opponents of venue reform argue that business debtors should be allowed to choose to file in a district that has the expertise and experience necessary to handle complex reorganizations

Chapter 11 filings are expected to soar in the coming months due to COVID-19. This may prompt closer scrutiny of the venue laws than before. As noted by Professor **Bob Lawless** in a recent **Credit Slips** posting “there have been lots of efforts at venue reform, but this time feels different”.

How many cases could this legislation possibly affect? During the year ended March 31, 2020 there were 6,938 total chapter 11 cases filed nationwide (including cases with multiple related filings). About one in five of these debtors listed an address for their principal place of doing business or location of their principal assets that was outside of the judicial district where they filed. Over 87 percent of these out-of-district cases were filed in Delaware, New York or Texas.

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<sup>1</sup> Ed Flynn is a consultant with ABI and serves as a coordinating editor for the *ABI Journal*. He previously worked for more than 30 years at the Executive Office for U.S. Trustees and the Administrative Office of the U.S. Courts.

<sup>2</sup> See: <https://www.congress.gov/bill/116th-congress/house-bill/4421/text>

<sup>3</sup> See: <https://www.creditslips.org/creditslips/Judges%27%20%20Support%20Venue%20Reform%20pdf%20%204.29.2020.pdf>

<sup>4</sup> See: <https://www.naag.org/assets/redesign/files/sign-on-letter/NAAG%20Support%20Letter%20-%20HR%204421.pdf>

# 2021 ROCKY MOUNTAIN BANKRUPTCY VIRTUAL CONFERENCE

Chapter 11 Cases Filed During the Year Ended March 31, 2020							
			Debtor Address (Principal Place of Business or Location of Principal Assets)				
Circuit	STATE	TOTAL FILED	Filing District	Different District in Home State	Different State	Outside United States	Unknown
<b>NATIONAL TOTAL</b>		<b>6,938</b>	<b>5,534</b>	<b>246</b>	<b>1,036</b>	<b>119</b>	<b>3</b>
DC	Washington DC	35	34		1		
1	Maine	14	14				
1	Massachusetts	83	83				
1	New Hampshire	15	15				
1	Rhode Island	6	6				
1	Puerto Rico	93	92			1	
2	Connecticut	32	32				
2	New York	961	744	66	133	18	
2	Vermont	5	5				
3	Delaware	726	5		700	19	2
3	New Jersey	263	248		14	1	
3	Pennsylvania	177	175	2			
4	Maryland	104	104				
4	North Carolina	118	105	8	5		
4	South Carolina	24	23		1		
4	Virginia	87	76	1	10		
4	West Virginia	44	43	1			
5	Louisiana	85	65	19	1		
5	Mississippi	28	28				
5	Texas	1002	715	137	77	73	
6	Kentucky	58	47		11		
6	Michigan	107	96		11		
6	Ohio	152	148	2	2		
6	Tennessee	119	109		10		
7	Illinois	134	134				
7	Indiana	45	45				
7	Wisconsin	35	32	3			
8	Arkansas	30	30				
8	Iowa	12	10	1	1		
8	Minnesota	30	30				
8	Missouri	79	76		2	1	
8	Nebraska	18	18				
8	North Dakota	3	3				
8	South Dakota	4	4				
9	Alaska	10	10				
9	Arizona	155	155				
9	California	651	641	3	5	2	
9	Hawaii	12	12				
9	Idaho	12	12				
9	Montana	15	14		1		
9	Nevada	123	115		8		
9	Oregon	31	26		4		1
9	Washington	109	105	1	3		
10	Colorado	64	63		1		
10	Kansas	59	48		10	1	
10	New Mexico	20	20				
10	Oklahoma	42	41		1		
10	Utah	19	19				
10	Wyoming	7	5		2		
11	Alabama	64	63			1	
11	Florida	581	566	1	13	1	
11	Georgia	236	225	1	9	1	
Source of Data: Administrative Office of the United States Courts, Table F-5A							

The prior chart showed which states received additional chapter 11 cases during the year due to the existing chapter venue laws. The following chart compares actual filings in each state with what filings would have been under H.R. 4421. If it had been in effect during the year, 35 states would have received more chapter 11 cases, filings in 11 states would be unchanged, and six states would have lost cases.

# 2021 ROCKY MOUNTAIN BANKRUPTCY VIRTUAL CONFERENCE

Chapter 11 Cases Filed During the Year Ended March 31, 2020				
Circuit	STATE	Actual Filings	Filings With Venue Reform	Caseload Change After Venue Reform
NATIONAL TOTAL		6,938	6,938	0
DC	DC	35	36	1
1	Maine	14	14	0
1	Massachusetts	83	92	9
1	New Hampshire	15	15	0
1	Rhode Island	6	15	9
1	Puerto Rico	93	93	0
2	Connecticut	32	64	32
2	New York	961	853	-108
2	Vermont	5	5	0
3	Delaware	726	34	-692
3	New Jersey	263	267	4
3	Pennsylvania	177	240	63
4	Maryland	104	108	4
4	North Carolina	118	136	18
4	South Carolina	24	35	11
4	Virginia	87	87	0
4	West Virginia	44	46	2
5	Louisiana	85	123	38
5	Mississippi	28	34	6
5	Texas	1002	1071	69
6	Kentucky	58	70	12
6	Michigan	107	124	17
6	Ohio	152	172	20
6	Tennessee	119	133	14
7	Illinois	134	161	27
7	Indiana	45	101	56
7	Wisconsin	35	35	0
8	Arkansas	30	33	3
8	Iowa	12	11	-1
8	Minnesota	30	47	17
8	Missouri	79	98	19
8	Nebraska	18	19	1
8	North Dakota	3	3	0
8	South Dakota	4	4	0
9	Alaska	10	13	3
9	Arizona	155	173	18
9	California	651	760	109
9	Hawaii	12	12	0
9	Idaho	12	14	2
9	Montana	15	14	-1
9	Nevada	123	117	-6
9	Oregon	31	29	-2
9	Washington	109	115	6
10	Colorado	64	163	99
10	Kansas	59	93	34
10	New Mexico	20	21	1
10	Oklahoma	42	49	7
10	Utah	19	19	0
10	Wyoming	7	7	0
11	Alabama	64	67	3
11	Florida	581	638	57
11	Georgia	236	255	19

**See additional Excel charts.**

# Faculty

**Hon. Kevin R. Anderson** is a U.S. Bankruptcy Judge for the District of Utah in Salt Lake City, appointed on Sept. 4, 2015. Previously, he served for 17 years as the standing chapter 13 trustee for the District of Utah, administering more than 70,000 chapter 13 cases. Judge Anderson served as president of the National Association of Chapter 13 Trustees (NACTT), and he also served on several national committees regarding chapter 13 legislation, rules, forms and policy. He has frequently written and presented on chapter 13 issues, including for the *Norton Bankruptcy Law Advisor*, the *ABI Journal*, the *NACTT Quarterly* and the *NACTT Academy for Consumer Bankruptcy Education*. He is also a Fellow in the American College of Bankruptcy. Prior to his appointment as chapter 13 trustee, Judge Anderson practiced for 13 years as a commercial litigator with an emphasis on civil fraud, real property, and representing chapter 11 and 7 trustees. He also clerked for Hon. David N. Naugle, U.S. Bankruptcy Judge for the Central District of California. Prior to law school, Judge Anderson worked for two years as a data systems specialist testing military and commercial jet engines for General Electric. He received his J.D. *cum laude* from the J. Ruben Clark Law School at Brigham Young University.

**Hon. Elizabeth E. Brown** was named a U.S. Bankruptcy Judge in 2001 for the District of Colorado in Denver and reappointed in 2015. She also served on the Tenth Circuit Bankruptcy Appellate Panel from 2003-13. Following law school, Judge Brown was in private practice from 1986 through 2001, primarily in the area of corporate insolvency and restructuring. Immediately prior to joining the bench, she was a partner and chair of the bankruptcy department at Holme, Roberts & Owen in Denver. Judge Brown is an adjunct professor at both the University of Colorado Law School and the University of Denver Sturm College of Law, and frequently speaks on bankruptcy. She is a member of the National Conference of Bankruptcy Judges (for which she has served on various committees and is editor-in-chief of the *American Bankruptcy Law Journal*) and sat on committees for the Administrative Office of the U.S. Courts, and she served as judicial chair of ABI's Rocky Mountain Bankruptcy Conference from 2001-15. She is also a Fellow in the American College of Bankruptcy. Judge Brown graduated from Colorado College with honors and received her J.D. from the University of Colorado Law School with honors, where she served as the managing editor of the *University of Colorado Law Review*.

**Kyler K. Burgi** is an associate in the Trial Department of Davis Graham & Stubbs LLP in Denver, where his practice focuses on bankruptcy and creditors' rights, complex commercial litigation and toxic tort litigation. He has a diverse bankruptcy and creditors' rights practice that spans multiple industries, including oil & gas, mining, real estate, retail, tech and recreation. Mr. Burgi helps lenders, borrowers, trade creditors, mechanics' and oil and gas lienholders, and equityholders develop and implement strategies to navigate in-court and out-of-court restructurings, bankruptcy proceedings, judicial and nonjudicial foreclosures, and receivership actions. He defends clients against preference and fraudulent transfer claims in courts across the country. He also represents debtors and trustees in chapter 7 and 11 bankruptcies. Mr. Burgi assists clients with purchases of distressed assets through the § 363 sale process, from preparing bids to obtaining court approval to post-closing matters. He also consults on commercial transactions and mergers & acquisitions to help clients manage risks associated with insolvency and bankruptcy. Mr. Burgi has litigated matters throughout Colorado and

the Mountain West. He has guided clients to successful results in numerous lawsuits and arbitrations, including adversarial business separations, fraud claims, oil & gas disputes, toxic tort cases, breach-of-contract actions and real estate disputes. Mr. Burgi currently co-chairs the Colorado Bar Association's Bankruptcy Subsection. He also has been named among the "Ones to Watch" in the area of Commercial Litigation by *The Best Lawyers in America*. Previously, Mr. Burgi clerked for Hon. Philip A. Brimmer of the U.S. District Court for the District of Colorado. He received his J.D. from the University of Denver Sturm College of Law, where he graduated first in his class. While in law school, he competed nationally as a member of the Sturm College of Law's ABA-NTC National Trial Team, served as an editor of the *Denver University Law Review*, and interned for the U.S. Attorney's Office. Prior to law school, Mr. Burgi worked as a television news reporter.

**Hon. Terrence L. Michael** is a U.S. Bankruptcy Judge for the U.S. Bankruptcy Court for the Northern District of Oklahoma in Tulsa and a member of the Bankruptcy Appellate Panel of the Tenth Circuit. He has authored more than 170 published opinions, as well as articles in the *Tulsa Law Review*, *Texas Tech Law Review* and *Creighton Law Review*. Upon graduation from law school, Judge Michael joined the firm of Baird, Holm, McEachen, Pedersen, Hamann & Strasheim in Omaha, Neb., where he was a member of the firm's bankruptcy and creditors' rights practice group. His practice included all types of bankruptcy matters and general civil litigation. While at Baird, Holm, Judge Michael chaired the Bankruptcy Section of the Nebraska State Bar Association and was a member of the local rules committee responsible for drafting local rules in chapter 12 cases. He also authored and presented numerous papers at various continuing legal education seminars. Judge Michael has taught courses for the American Banker's Association School of Agri-Finance and Metro Technical Community College. On June 9, 1997, he began his career as a bankruptcy judge, and on June 7, 2000, he was appointed to the Bankruptcy Appellate Panel of the Tenth Circuit, a position he still holds. As a member of the BAP, Judge Michael chaired the committee charged with revising the local rules of that court. He is an associate editor of the *American Bankruptcy Law Journal* and an adjunct professor of law at the University of Tulsa, and he has served as a speaker at various seminars presented by the Federal Judicial Center, the Eighth Circuit Judicial Conference, the Tenth Circuit Judicial Conference, ABI, the Nebraska State Bar Association, the Oklahoma Bar Association, the Tulsa County Bar Association, the West Texas Bar Association and the Southwest Regional Turnaround Management Association. Judge Michael is a member of the National Conference of Bankruptcy Judges, having served on various committees and the Board of Governors. He received the President's Award for Distinguished Service to the Conference in 2018. Judge Michael is an emeritus member of the Council Oak/Johnson-Sontag American Inn of Court, which awarded him the John A. Athens Leadership Award in 2004, and the Nebraska State Bar Association. He was part of a multi-state select choir, which sang in Carnegie Hall in 1999, and recorded his first studio album in collaboration with Oklahoma Music Hall of Fame member and Grammy winner David Teegarden in 2018. Judge Michael received his B.A. *magna cum laude* in history from Doane College in 1980 and his J.D. from the University of Southern California's Gould School of Law in 1983.

**Hon. Cathleen D. Parker** is Chief Bankruptcy Judge of the U.S. Bankruptcy Court for the District of Wyoming in Cheyenne, appointed in June 2015. Prior to her appointment, she was an attorney with the Wyoming Attorney General's Office for 16 years. She primarily represented the Wyoming Departments of Revenue and Audit in front of administrative tribunals, the Wyoming State Courts and the Wyoming Supreme Court. At the time of her appointment, she was the supervisor of the Revenue Section of the Civil Division and was the head of the Attorney General's Bankruptcy Unit. Prior to



joining the Office of the Attorney General, Judge Parker worked as an attorney in private practice in Colorado handling both civil and criminal matters. She received her J.D. in 1998 from the University of Wyoming School of Law and received the ABI Medal of Excellence.

**Hon. Michael E. Romero** is Chief Judge for the U.S. Bankruptcy Court in the District of Colorado in Denver, initially appointed in 2003 and appointed Chief Judge in July 2014. He has also served on the Tenth Circuit Bankruptcy Appellate Panel since 2010. Previously, he was with the firm of Pendleton, Friedberg, Wilson & Hennessey, P.C., where he practiced as a trial attorney specializing in bankruptcy-related matters. He has served on numerous committees and advisory groups for the Administrative Office of the U.S. Courts, is the past chair of the Bankruptcy Judges Advisory Group, and served as the sole bankruptcy court representative to the Judicial Conference of the U.S., the governing body for the federal judiciary. Judge Romero recently completed his term as president of the National Conference of Bankruptcy Judges and actively participates on several of its committees. He also serves on the Executive Board of Our Courts, a joint activity between the Colorado Judicial Institute and the Colorado Bar Association that provides programs to further public understanding of the federal and state court systems. He is a member of the Colorado Bar Association, ABI, the Historical Society of the Tenth Circuit and the Colorado Hispanic Bar Association. Judge Romero received his undergraduate degree in economics and political science from Denver University in 1977 and his J.D. from the University of Michigan in 1980.

**Hon. Joseph G. Rosania, Jr.** is a U.S. Bankruptcy Judge for the District of Colorado in Denver. Previously, he was a shareholder of Connolly, Rosania & Lofstedt, P.C. (CR&L), where he focused on bankruptcy-related litigation, and clerked for Hon. Jay L. Gueck, former U.S. Bankruptcy Judge for the District of Colorado. He also ran a successful solo law practice concentrating on bankruptcy and related litigation. Judge Rosania was a member of the Panel of Private Trustees for the District of Colorado from 1985-2015. He also served as a chapter 7 and 11 trustee, an examiner in three cases including a securities fraud case, and as counsel to unsecured creditors' committees in several cases, and he represented represented chapter 11 debtors. A frequent speaker, Judge Rosania has taught business law classes at the University of Colorado and Colorado State University. He received his J.D. in from the University of Colorado School of Law, where he was in the top 20 percent of his class.

**Hon. William T. Thurman** is a U.S. Bankruptcy Judge for the District of Utah in Salt Lake City and served as its chief judge, and he is a prior member and chief judge of the Tenth Circuit Bankruptcy Appellate Panel. He is a current member of the U.S. Judicial Conference Code of Conduct Committee and a former member of the Conference's Financial Disclosure Committee. Judge Thurman has also served as a board member for the National Conference of Bankruptcy Judges and has chaired several of its committees. He is a Fellow with the American College of Bankruptcy. Judge Thurman received the Distinguished Service Award from the Utah Chapter of the Federal Bar Association in 2012. Previously, he was in private practice in Salt Lake City and practiced with McKay, Burton & Thurman for 27 years, where he focused his practice on bankruptcy law and served as a panel chapter 7 bankruptcy trustee. Judge Thurman received both his B.A. and J.D. from the University of Utah.

**Hon. Kimberley H. Tyson** is a U.S. Bankruptcy Judge for the District of Colorado in Denver, appointed to the bench in May 2017. Previously she was a director of Ireland Stapleton Pryor & Pascoe, PC, where her practice focused on bankruptcy and related litigation. She represented secured and un-

secured creditors, creditors' committees, trustees and purchasers in bankruptcies, as well as clients in contested foreclosure proceedings and lender-liability cases. She also pursued hidden or improperly transferred assets. In March 2011, she was appointed to the panel of chapter 7 trustees by the U.S. Trustee. Ms. Tyson is a former chair of the Colorado Bar Association's Bankruptcy subcommittee and is a frequent lecturer on bankruptcy issues, co-authors the bankruptcy chapter of the *Annual Survey of Colorado Law*, and has been named in *Colorado Super Lawyers*. She is an active member of ABI, having served on its Rocky Mountain Bankruptcy Conference advisory board since 2003. Ms. Tyson clerked for Hon. John K. Pearson of the U.S. Bankruptcy Court for the District of Kansas and Hon. Jerry G. Elliot of the Kansas Court of Appeals. She earned her B.A. at Smith College and her J.D. at the University of Kansas School of Law.