

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO**

**ELECTRONIC FILING PROCEDURES**

*CM-ECF Version 4.1, Revised 10-11-2011*

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## **1 Introduction**

### **1.1 Authority**

These procedures are maintained by the Clerk pursuant to New Mexico Local Bankruptcy Rule 5005-4.1(b). Inquiries regarding these procedures may be directed to the Court's Electronic Information Specialists or to any other member of the Clerk's Office Operations Department staff at 505-348-2500 or toll free at 866-291-6805 and press 3.

### **1.2 Mandatory Electronic Filing**

New Mexico Local Bankruptcy Rule 5005-4.1(a), amended effective August 2, 2010, reads: “(a) **E-filing Mandatory for Attorneys.** Subject to subsection (c) below, and unless the court orders otherwise, all papers filed by an attorney shall be submitted electronically via the court's electronic filing system.”

### **1.3 Papers Excepted from Electronic Filing Requirement**

Documents currently excepted from the mandatory electronic filing requirement are sealed documents and oversized exhibits.

#### **1.3.1 Documents to be Filed Under Seal**

Electronically file the motion to file a document under seal using the procedure on the Court's Website at [www.nmcourt.fed.us/usbc](http://www.nmcourt.fed.us/usbc). (Search for “Motion to Seal Documents”).

#### **1.3.2 Oversized Exhibits**

Oversized exhibits are items which are larger than 8 1/2" x 11" (e.g., an 8 1/2" x 14" copy of a mortgage which bears one or more bar codes) or which are not suitable for conversion to electronic media (e.g., gold coins or a rotted timber).

#### **1.3.3 Exhibits, Generally**

Exhibits (and any oversized exhibits) for trials and final hearings are delivered to the chambers of the judge who is hearing the matter, in accordance with the terms of a pretrial order or other direction from that judge. They are not filed with the Clerk's Office.

The judges strongly discourage attaching any exhibits to documents filed with the Court. The Court's experience is that most exhibits are not necessary for the Court's consideration of a matter. Further, many do not meet the scanning requirements published on our Website. If you have any questions about the need to attach exhibits to a document, please consult with the appropriate judge's chambers staff.

New Mexico Local Bankruptcy Rule 9070-1, Exhibits, reads: “Unless the court orders otherwise, exhibits of such size or nature as to be unsuited for electronic storage shall be retained following hearing or trial by the party introducing the same in evidence. The party shall be responsible for producing exhibits if required for an appeal record. Exhibits not claimed by the parties within 90 days of a final disposition of the matter may be disposed of by the court.”

#### **1.3.4 Non-filing of Discovery Documents**

New Mexico Local Bankruptcy Rule 7026-1(d) provides as follows:

##### **(d) Filing of Discovery Documents.**

(1) Discovery requests and responses thereto, including interrogatories, requests for production or inspection of documents, and requests for admission, are served upon other parties but shall not be filed with the court except in connection with a motion to compel, for a protective order, or for discovery sanctions.

(2) Certificates of service of discovery requests and responses thereto and of notices of depositions shall be filed with the court within a reasonable time after service is made.

#### **1.4 How to Comply with Electronic Filing Requirement**

If you are not already electronically filing all documents, you should carefully read these procedures and the documents on the Court's Website.

Then, register with this Court for either an ECF attorney account or an ECF limited use account (see section 2.3 of these procedures) and ensure that you fulfill the hardware and software requirements set forth in section 6.1. Information about training you may need can be found in section 3.

#### **1.5 Consequences of Failure to Comply with Electronic Filing Requirement**

If you file a document in paper and do not have an exemption from the electronic filing requirement, you will be contacted by the Clerk of Court or the Clerk's designee. The Clerk of Court will seek to determine the basis of your failure to comply with the local rule and may refer the matter to the Chief Judge for further action, which may include the imposition of sanctions.

#### **1.6 Attorney Exemption from Mandatory Electronic Filing**

The Chief Judge may grant exemptions from the mandatory electronic filing requirement on an attorney-by-attorney basis for a specific time period or for an indefinite time period. Submit a request for exemption from mandatory electronic filing to the Chief Judge in the form of a proposed Order of Exemption from Mandatory Electronic Filing Requirement. The proposed order should

substantially comply with the form presented on the Court's Website at [www.nmcourt.fed.us/usbc](http://www.nmcourt.fed.us/usbc). (Search for "Order of Exemption from Mandatory Electronic Filing Requirement.") As indicated on the form, grounds for the request for exemption and a specification of the exemption time period should be included in the order you prepare.

**Note** that proposed orders are required to be submitted to the Court via e-mail.<sup>1</sup>

### **1.6.1 Clerk May Authorize Certain Exemptions**

The Clerk of Court or designee may exercise discretion and grant exemptions to attorneys as appropriate.

### **1.6.2 Expiration of Exemption**

An exemption will no longer be in effect when the exemption period expires or when the attorney electronically files a document, whichever is earlier.

If your exemption expires and you are still unable to comply with the requirement, submit a new proposed order of exemption which recites current grounds. Remember to submit the order via e-mail to the Chief Judge.

If your exemption has expired and you have not either complied with the requirement or sought a continued exemption and you submit a paper document for filing, you will be contacted by the Clerk of Court or the Clerk's designee. The Clerk of Court will seek to determine the basis of your failure to comply with the local rule and may refer the matter to the Chief Judge for further action, which may include the imposition of sanctions.

## **1.7 Attorneys Who Are Not Admitted to the New Mexico Federal Bar**

If you are an attorney who is not admitted to practice before the United States District Court for the District of New Mexico (an "out-of-jurisdiction" attorney), you may practice before this Court on the terms and conditions set forth in NM LBR 2090-1. You will be required to comply with NM LBR 5005-4.1(a), which requires you to file documents electronically.

As long as you are admitted to practice in the bar of another state and you certify that you are in good standing in that bar, you may obtain a New Mexico ECF attorney account. You will need to have such an account in order to electronically file a motion to appear *pro hac vice*.

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<sup>1</sup>Effective January 1, 2005, attorneys are required to submit proposed orders via e-mail. Orders should be submitted to Judge Jacobvitz at [jacobvitz@nmcourt.fed.us](mailto:jacobvitz@nmcourt.fed.us), and to Judge Starzynski at [starzynski@nmcourt.fed.us](mailto:starzynski@nmcourt.fed.us). Instructions may be found on our Website. Click on "General" and then on "Procedures," or search for "Proposed Orders."

If you are an out-of-jurisdiction attorney who does not either wish to or need to be admitted to practice, as may be the case for attorneys filing documents such as requests to have your name placed on a case mailing list for receipt of notices given pursuant to Fed. R. Bankr. P. 2002, proofs of claim, etc., you will need to file such documents electronically. A New Mexico ECF limited use account may meet your needs. See section 2.3 and also review the information about CM-ECF accounts you will find on the Court's Website.

For more information about attorney admission, and links to forms, please see the "Admission to Practice" item under "Attorneys" on the Court's Website.

### **1.8 Emergency Filings Pending Activation of an NM Attorney ECF Account**

If you are an attorney who files bankruptcy petitions and you have an emergency situation which requires that you file documents before the training requirements listed in section 3.2 can be completed, please contact the Court's Electronic Information Specialists for assistance at 505-348-2500 or toll free at 866-291-6805 and press 3. Explain the situation, and the Electronic Information Specialists will schedule training and will give you instructions for the emergency situation.

## **2 New Mexico Uses the CM-ECF Electronic Filing System**

The Court uses the CM-ECF electronic records and electronic filing system developed by the Administrative Office of the United States Courts.

### **2.1 Access to Information is Via WebPACER; How to Register for a PACER Account**

Case information is available via WebPACER, the Internet-based system for Public Access to Court Electronic Records. There is no fee to register for a PACER account. Go to the link below to register on-line for a PACER account:

<http://pacer.psc.uscourts.gov/register.html>

The PACER Service Center is the Federal Judiciary's centralized registration, billing, and technical support center for electronic access to United States district, bankruptcy, and appellate court records. The Center is located in San Antonio, Texas. The PACER Service Center Website is organized and easy to navigate. We think you will find the employees of the PACER Service Center committed to excellent customer service.

For more information about PACER, go to the PACER Service Center at:

<http://pacer.psc.uscourts.gov/index.html>

Please note that a PACER account is needed in addition to a New Mexico CM-ECF e-filing account.

## **2.2 Cost to Access Information on CM-ECF**

The Judicial Conference of the United States has imposed an electronic public access user fee. The fee is assessed through PACER. Information regarding PACER billing is available on the PACER Service Center Website. You may also view documents from a computer at the clerk's office between 8:30 am and 4:30 pm, Monday through Friday, at no charge.

## **2.3 Obtaining a New Mexico ECF Account: Attorney Account or Limited Use Filer Account**

You will need a New Mexico ECF account to electronically file documents.

An attorney account allows electronic filing of any document other than those which are excepted from the electronic filing requirement (see section 1.3, Papers Excepted from Electronic Filing Requirement).

To obtain an attorney account, you must be admitted to practice in the United States District Court for the District of New Mexico and be in good standing or, if not admitted to practice in the United States District Court for the District of New Mexico, be admitted to practice and in good standing in the bar of any other state. You must also meet the Clerk's training requirements outlined in section 3.

A limited use filer account allows electronic filing of proofs of claim, requests for notice, transfers of claims, etc., and is intended to meet the needs of out-of-jurisdiction attorneys who do not either wish to or need to be admitted to practice, institutional creditors, and other persons who chiefly file proofs of claim. Check the court's Website for current training offerings.

### **2.3.1 To Activate a NM Attorney ECF Account**

First, complete the training requirements outlined in section 3.

Second, complete the portion of the ECF Test E-filing Certification form appropriate to your practice: attorney for debtors or attorney for creditors. The ECF Test E-filing Certification form may be found under "CM-ECF" on the Court's Website: [www.nmcourt.fed.us/usbc](http://www.nmcourt.fed.us/usbc). Click on "Registration & Training," and then on "ECF Test E-filing Certification."

Third, complete and sign the New Mexico ECF attorney account registration form (available from the Court's Website).

Fourth, submit the **ECF Test E-filing Certification** and the **registration form** via e-mail to [ecfhelp@nmcourt.fed.us](mailto:ecfhelp@nmcourt.fed.us).

The Clerk's Office will assess the test filings you submitted and will determine if they

are acceptable. If they are, and if your registration form has been properly completed and signed, your account will be activated and you will receive your Login and password via e-mail.

### **2.3.2 To Activate a NM Limited Use ECF Account**

Complete and sign the New Mexico ECF limited use account registration form (available from the Court's Website) and submit it via e-mail to [ecfhelp@nmcourt.fed.us](mailto:ecfhelp@nmcourt.fed.us). If your registration form has been properly completed and signed, your account will be activated and you will receive your Login and password via e-mail.

### **2.3.3 Additional Training May Be Required**

Should the Clerk or his designee determine that additional training is necessary for you to become an effective e-filer, the Court's Electronic Information Specialists will contact you to make arrangements for such training.

As indicated in section 3.6 if there are problems with the documents you electronically file, the Clerk may restrict your access to the CM-ECF system.

## **2.4 Use of Logins and Passwords; Security Concerns**

Any login name and password required for electronic filing shall be used only by the person to whom the login name and password are assigned and by such agents, members and employees of that person's firm as that person shall authorize. See also section 11.1, Signature of Filer, in these procedures.

Care should be taken to ensure that the PC you log on to ECF from is secure and not susceptible to, or infected by, spyware, viruses, and other computing dangers. It is a good idea to change your password frequently to reduce the risk of many of these dangers.

### **2.4.1 Multiple Logins Required for Multiple Filers in Same Organization**

The CM-ECF system does not allow simultaneous use of the same login for electronic filers and the system has not yet been configured to allow for filing agents. An organization with a number of persons who electronically file documents should apply for as many NM ECF accounts as needed. Each account may have associated with it a number of e-mail addresses to which Notices of Electronic Filing (NEF) will be sent.

### **2.4.2 Compromised CM-ECF Account**

If you believe that the security of a login has been compromised, you should change your ECF login and password by following the instructions in the next subsection.

### **2.4.3 Changes in Address, Telephone Number, Fax Number, or E-mail Address; Changing Login and/or Password**

New Mexico Local Bankruptcy Rule 9011-1.2 governs change of contact information and reads as follows:

An attorney appearing before the court shall ensure that any paper submitted to the court sets forth the attorney's name, address, telephone number, and facsimile number, if any, and e-mail address, if any, below the attorney's signature line. That attorney has a continuing duty to promptly notify the clerk, in writing, of all changes in mailing address, telephone number, facsimile number, or e-mail address, including updating the attorney's Electronic Case Filing (ECF) account information.

To update your ECF account, log-in to CM-ECF. Under "Utilities," click on "Maintain Your ECF Account." The "Maintain User Account" screen will appear. Update information as appropriate. Note that "Email information" can be accessed by clicking on that button. To change your ECF password, go to Utilities > "Change Your Password."

### **2.5 Linking CM-ECF and PACER Logins to Increase Efficiency**

Customers may wish to link their logins and passwords for CM-ECF and PACER so that you just have one login/password to access both programs, something which can save you a bit of time. Please contact the Court's Electronic Information Specialists for assistance at 505-348-2500 or toll free at 866-291-6805 and press 3.

## **3 Training**

### **3.1 Attorneys Who Already Have a CM-ECF Account in Another District and Who Do Not File Bankruptcy Petitions**

Attorneys who are experienced with using the CM-ECF system in another court or who are otherwise technically astute may seek a waiver of this requirement from the Court's Electronic Information Specialists (505-348-2500 or toll free at 866-291-6805 and press 3).

### **3.2 Attorneys Who File Bankruptcy Petitions**

Attorneys who wish to file bankruptcy petitions are required to review the CM-ECF section of our Website, and to then successfully complete a series of test exercises as outlined in the "ECF Test E-filing Certification" document. **This certification must be completed and submitted with the ECF Registration Form before a login and password will be issued.**

Both forms are available from the Court's Website: [www.nmcourt.fed.us/usbc](http://www.nmcourt.fed.us/usbc). Click on "CM-ECF," and then scroll to "Registration & Training."

### **3.3 Attorneys Who Do Not File Bankruptcy Petitions**

Electronic filing of documents in existing cases and adversary proceedings is a simpler process than electronic filing of bankruptcy petitions. Consequently, although training in how to file these documents is strongly recommended - it is not required. You must still obtain a New Mexico ECF attorney account.

### **3.4 Persons Filing Requests for Notice, Claims, Etc. (Limited Use Filers)**

Limited use filers are strongly encouraged to review the creditors section of our web page which includes forms and procedures for creditors.

### **3.5 Training Classes**

Both attorney training sessions (representing debtors and representing creditors) take three hours. Classes are held in the morning, from 9:00 am to 12:00 pm, unless otherwise noted. Staff members are welcome, and encouraged, to attend. Schedules for training may be found on the Court's Website. Under "CM-ECF," in the top menu bar, click on "Registration & Training."

### **3.6 Clerk's Authority to Impose Training Requirement**

If there are technical or procedural problems with the documents you electronically file which indicate the need for training, the Clerk of Court has the authority to restrict your access to the CM-ECF system and to require successful completion of training before reinstating access. The Clerk will generally follow a "three strikes and you're out" approach.

## **4 Payment of Fees**

Much like an online merchandise order, the CM-ECF program includes an interactive payment module called Pay.gov. The module appears during the electronic filing process when a new case is commenced or a document that requires a fee is filed. All electronic filers are required to pay filing fees through Pay.gov on the day a case is commenced or the fee document is filed. *See 28 U.S.C. § 1930*

Pay.gov is the U.S. Department of Treasury's module used for making secure electronic payments to federal government agencies. Payments can be made directly from your bank account (ACH) or by credit or debit cards. Currently, the following cards are accepted: American Express, Discover, MasterCard and Visa. Debit cards with the MasterCard or Visa logo are also accepted.

### **4.1 Pay.gov Procedures**

More information about Pay.gov, including the step-by-step process, is available in the document, "Paying Filing Fees via Pay.gov," which can be found on the Court's Website by searching for "Paying Filing Fees."

#### **4.2 Payment Options in CM-ECF: Item-by-item or Daily Accumulation**

The Pay.gov payment screen is displayed after the successful submission of a document that requires a fee. The system provides two options: "Pay Now;" or "Continue Filing" and accumulate fees for payment at the end of the day.

If you choose *pay now*, a list of all outstanding fees is displayed. You will select the fees you want to *pay now*. Once payment has been authorized, the fee is paid directly to the United States Treasury.

If you choose *continue filing and pay later*, the fee amount is recorded and the payment process is deferred. The next time you submit a filing of any kind to any case, the Summary of Current Charges is displayed. It will show all accumulated recorded fees including the last document filed that required a fee. You can choose to pay all accumulated fees at the time you file the last fee related document or new case, **or** you can pay from the "Internet Payments Due" report located under the Utilities menu.

#### **4.3 Consequences of Failure to Pay Fees in a Timely Manner**

All fees accumulated through out the day, must be paid by 11:59 p.m., Mountain Time the day of filing. If you fail to timely pay **any** filing fees, the system will automatically lock you out. You will receive an automated email from CM-ECF informing you that your ECF access has been disabled for outstanding fees. You can still view cases or documents by logging into PACER .

##### **4.3.1 Getting Your CM-ECF Account "Unlocked"**

To successfully "unlock" your account, click on the hyperlink in the email or log in to CM-ECF and go to, "Internet Payments Due" under the Utilities menu to pay the fees. You cannot file any documents until the fees from the previous day have been paid. Court staff will no longer have the ability to unlock accounts. The upgrade to version 4.1 made it so that accounts can only be "unlocked" when the fees are collected through Pay.gov.

#### **4.4 Deferral of Filing Fees**

Certain fees may be deferred if the filer is a trustee or debtor in possession without sufficient estate funds to pay the fee. When the fee is deferred, it is only deferred until such time that the estate can secure liquid funds. The Pay.gov screen is by-passed in this situation when questions in the docketing process are appropriately answered.

#### **4.5 Waiver of Filing Fee in Chapter 7 Bankruptcy Case**

In a chapter 7 case where an application for waiver of the filing fee is filed, the filer will select, "Fee not paid." Later in the case opening process, the default fee of \$0.00 is presented. The Pay.gov screen is by-passed in this situation.

#### **4.6 Payment of Chapter 7, 11, 12, or Chapter 13 Bankruptcy Case Filing Fee in Installments for an Individual Debtor**

In a chapter 7, 11, 12, or chapter 13 case where an individual debtor files an application to pay the filing fee in installments, "Installment" is reflected in the fee status field. Later in the case opening process, the default fee of \$0.00 is presented. **If NO installment payment will be made with the petition, leave the default as \$0.00.** The Pay.gov screen is by-passed in this situation.

**If an installment payment WILL BE made with the petition,** type in the amount indicated on the application. This amount will appear as the filing fee amount on the Pay.gov screen.

#### **4.7 Refund of Filing Fees**

The policy established by the Judicial Conference of the United States prohibits the Clerk from refunding filing fees unless the Clerk collected the fee in error. This includes duplicate filings.

If you believe that you have been erroneously charged a fee, you will need to apply to the Court for a refund by filing a motion. Submit a form order to the appropriate chambers once you have filed your request.

### **5 Electronically-filed Documents – Administrative Provisions**

#### **5.1 Official Document of Record**

New Mexico Local Bankruptcy Rule 5003-1(c) states: "**(c) Official Record.** The official document of record is the electronic document stored in the court's database."

A printed copy of the Notice of Electronic Filing associated with the document is the equivalent of the Court's mechanical file stamp. The Notice of Electronic Filing is produced when the filing is submitted, and is available to the filer at that point. The Notice of Electronic Filing is also sent to other e-filers on the case when the filing is submitted. The filer and other recipients may wish to print or save the notice for future reference or use.

#### **5.2 "Endorsed" Copies and Certified Copies**

A footer showing the case number, the document number, the date of filing and the date and time the document was entered on the docket, the page numbers, and a brief description

appears on all filed documents, whether submitted electronically or in paper. A more formal, "endorsed" copy of an electronically-filed document may be obtained by printing the document and its Notice of Electronic Filing. Persons who did not receive the Notice of Electronic Filing may submit a copy request to the Clerk's Office (per-page fees apply).

A certified copy of an electronically-filed document may be obtained by submitting a request to the Clerk's Office. The Clerk's Office will print out the document (charging a per-page copy fee) and the associated Notice of Electronic Filing and will certify the copy (charging the applicable certification fee on a per-document basis).

### **5.3 Date and Time Filed; Application of the "Drop Box Rule"**

Any document filed electronically will be electronically file stamped with the actual time and date of filing; this information appears in the footer of the document and in the Notice of Electronic Filing associated with the document.

New Mexico Local Bankruptcy Rule 5005-1(a) applies. The rule reads as follows: "Any paper filed electronically after the close of business but before 8:00 a.m. Mountain Time the following business day shall be deemed filed at midnight the previous business day. This rule shall not apply when an order specifies a date and time by which a paper must be filed."

Paper documents are file-stamped upon receipt, and the date reflected on the file stamp will be what is used as the file date in CM-ECF.

### **5.4 Filing Items for Expedited Consideration**

For emergency motions or other matters which require expedited consideration by the judges, contact the judge's office and bring the matter to the attention of the judge's staff.

### **5.5 Copy Requirements**

The Clerk's copy submission requirements do not apply to electronically filed documents. For filer's service responsibilities, see section 10.3 Filer's Responsibilities: service and certification of service.

## **6 The Electronic Filing Process**

Complete instructions for electronic filing are posted on the Court's Website under CM-ECF link in the top menu bar, and under Procedures, you will see electronic filing procedures.

### **6.1 Technical Requirements (Hardware and Software)**

For lists of the hardware and software requirements for electronic filing, go to the Court's Website, click on the CM-ECF link in the top menu bar, and under Procedures, you will see System Requirements.

## **6.2 Electronic Filing Using Equipment in the Clerk's Office Public Viewing Room**

Attorneys may electronically file using equipment available in the Clerk's Office Public Viewing Room (Room 10206-A, Tenth Floor, Dennis Chavez Federal Building and United States Courthouse, 500 Gold Avenue SW, Albuquerque, New Mexico) during office hours (8:30 a.m. to 4:30 p.m., Monday through Friday).

If you are having difficulty with your office equipment, we can serve as an emergency resource to you. We provide computers that can be used to type documents, the software needed to print scanned images to *pdf*, and, if needed, we can scan a document and save it to *pdf* for you. We also provide Internet access to the Court's Website. **Please note** that the Clerk's Office does not provide any bankruptcy software programs or any word processing software.

We envision attorneys using Court computers to electronically file in only a few instances<sup>2</sup>. For example:

- Your Internet connection is down, but you are able to create documents and save them as *pdf* files on a CD.
- Your scanner is broken.
- You are able to create the documents you need to file and to save them as *pdf* files to a CD, but you do not have access to the Internet; or, you are able to create the documents you need to file, but you do not have software which will enable you to save them as *pdf* files on a CD.

Customer service clerks will be glad to help you in these situations.

## **6.3 Paying Filing Fees: Special Instructions for Filings on Behalf of a Child Support Creditor and for Certain Adversary Proceedings**

If you are filing a stay motion, motion to compel abandonment, or a motion to withdraw the reference on behalf of a child support creditor or its representative, you must submit a completed Form B281 in *pdf* format as an attachment to the pleading. (See items 6 and 20 of the Bankruptcy Court Miscellaneous Fee Schedule which follows 28 U.S.C. § 1930; the form "Appearance of Child Support Creditor or Representative [B 281]" can be found on the Court's Website.) *Be sure to add the child support creditor and choose the "Child Support Creditor"*

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<sup>2</sup>The Court considers a computer with reliable access to the Internet to be a basic tool for any attorney. For practitioners representing debtors, bankruptcy petition software is another basic tool. The additional equipment and software needed for electronic filing are reasonably priced and also are common in the business world today. Therefore, the Court's expectation is that there will be little need for an attorney to use the Court's equipment because the attorney does not have the necessary equipment.

*role from the drop down list to ensure that no fee is charged for filing a fee related document.*

For adversary proceeding complaints where the filer is entitled to waiver or deferral of the fee, the "Open AP Case" process allows filing without payment of a fee. If you are filing a complaint on behalf of a child support creditor or its representative, you must submit a completed Form B281 in *pdf* format as an attachment to the pleading, as described above.

#### **6.4 Duty to Review Scanned Images; Incorporate as a Pre-filing Check**

Please remember that NM LBR 5005-1(b) provides as follows:

(b) **Filer's Duty to Review Scanned Image.** The filer of a paper document shall review for accuracy the scanned image of the document within 14 days of the date of filing of the document. If no correction of the scanned image is requested by the filer within 14 days of the date of filing of the document, the image of the document will stand as stored in the court's database.

As is emphasized in electronic filing training, the step of ensuring the quality of the image contained in the *pdf* file you submit is a very important pre-filing task.

The page size of *pdf* files you submit can also be a concern, particularly for plans and notices in chapter 13 cases, where the documents are sent for mailing through the Bankruptcy Noticing Center. The BNC limits page size to 9.5 x 12 inches. To verify the page size of a document before submitting it for filing, follow the procedure you will find on the Court's Website. Search for "Resize Pages of a PDF Document."

#### **6.5 Accomplishing Filing in the Face of Technical Problems**

The Court's analysis of our experience with electronic filing shows there are limited situations where electronic filing becomes problematic. Descriptions of the situations follow, along with procedures you should follow in those circumstances.

##### **6.5.1 Attorney Has Technical Problems**

Your computer has crashed or your Internet service is not available, your computer is otherwise inoperable, or you cannot access CM-ECF:

(a) One option for your consideration, if there is not an imminent deadline associated with the filing of the document, is to file the document later.

(b) If you are in the Albuquerque metropolitan area, you may use the equipment available in the Clerk's Office Public Viewing Room to file your document (see section 6.2 of these procedures). If possible, bring the documents you want to file saved to disk as *pdf* documents.

(c) Prepare a Certificate of Inability to Electronically File Due to Technical Problems (following the form posted on the Court's Website), and either affix your electronic signature or sign the original certificate and save it as a *pdf* file. Then:

(i) If your e-mail is working: Send an e-mail message to *web\_ops@nmcourt.fed.us* and attach the document to be filed and the certificate, each as *pdf* files. The Clerk's Office can then electronically file the document and the certificate and their presence on the docket will tell the story. The filing date and time will be those reflected on the e-mail message.

(ii) If your e-mail is not working: Fax the certificate and the document to the Clerk's Office (505-348-2473). We will scan the certificate and the document, saving them as *pdf* files, and will then electronically file them. The presence of the document and the certificate on the docket will tell the story. The filing date and time will be those reflected on the fax.

#### **6.5.2 CM-ECF or the Court's Website Is Not Available During Business Hours**

Our business hours are Monday through Friday from 8:30 a.m. to 4:30 p.m. Call the Clerk's Office (505-348-2500 or toll free 866-291-6805) and confirm that our e-mail system is working. If it is, follow the instructions in section 6.5.1, above.

#### **6.5.3 CM-ECF or the Court's Website Is Not Available Outside of Business Hours**

Follow the instructions in section 6.5.1, above.

### **6.6 Notice of Electronic Filing**

When a document is submitted, the CM-ECF system immediately produces a "Notice of Electronic Filing." This notice is automatically sent via e-mail to other e-filers in the case. The notice contains a hyperlink to the case docket, which is available to a recipient who has a PACER account. The notice also has a hyperlink to the image of the filed document, which constitutes the recipient's one "free look" at the document (the one "free look" is available for 15 days). The document may be saved on the viewer's own system at this point for future reference. The text of the docket entry for the filing is also included in the notice.

A filer's CM-ECF account allows the filer to designate a primary e-mail address for notices and additional addresses (for an assistant, a partner, etc.). Each of the notices will contain the hyperlink to the image of the filed document, so it is possible to have a number of "free looks" at the same document. The link to the document in e-mails sent to additional addresses also is available for 15 days or until it is viewed, whichever is earlier.

See section 10.3 for a filer's responsibilities to make and certify service.

## 7 Special Instructions for Certain Documents

### 7.1 Petition

Specific instructions for filing a petition and associated initial documents are covered in training. CM-ECF includes a module which automatically assigns a judge, a trustee, and the § 341 meeting to a case. **This module will only work if you have first uploaded the mailing list text file.** At a minimum, the mailing list text file must contain the name and address of the New Mexico Taxation and Revenue Department. See the most recent edition of the Clerk's mailing list guidelines.

### 7.2 Chapter 13 Plan and Related Motions Document

New Mexico Local Bankruptcy Rule 3015-1, Chapter 13 – Plan and Notice of Confirmation Hearing, provides that if you file the chapter 13 plan and the notice of confirmation hearing at the same time you file a chapter 13 petition, the Clerk will give notice of the deadline for filing objections to confirmation, with a copy of the plan attached, along with the § 341 meeting of creditors notice. If the chapter 13 plan and the notice of confirmation hearing are not filed within a few minutes of the filing of the petition, you will be responsible for sending the notice and plan to all creditors and other parties in interest.

The Clerk has prepared two forms of notice of confirmation hearing: NM LF 600, designed for use when the plan and notice are filed with the petition so that the Clerk sends the plan and notice with the § 341 notice, and NM LF 601, designed for use when the plan and notice are not filed with the petition and will be sent to all creditors by the attorney. The main difference between the notices is in the certificate of mailing. In either case, you will prepare and electronically file the notice. Where the attorney is preparing and sending the notice, the date, time, location and designation of the hearing is entered on the case docket as part of the section 341 meeting entry.

### 7.3 Suggested Wording of Notices of Deadline for Filing Objections to Refer to PACER

The wording used in a notice of deadline for filing objections to a request for relief should include reference to accessing documents of interest via PACER. For example:

If you object to the requested relief, you must file a written objection with the Clerk of the United States Bankruptcy Court (address above) within 21 days of the date of service of this notice. You must serve your objection on *(filer's name here)* at *(filer's address here)*. If you are an attorney, you must electronically file your objection.

The document which is the subject of this notice may be viewed for a per page fee via the PACER (Public Access to Electronic Court Records) system. Log on to PACER at [ecf.nmb.uscourts.gov](http://ecf.nmb.uscourts.gov). For registration and use instructions, see

[pacer.psc.uscourts.gov/index.html](http://pacer.psc.uscourts.gov/index.html). If you are an attorney who has filed a notice of appearance in this case and if you have a New Mexico attorney ECF account, a copy of the document is available from the Notice of Electronic Filing which was sent to your ECF e-mail address at the time the document was filed.

Anyone may view the document from a computer at the clerk's office between 8:30 a.m. and 4:30 p.m., Monday through Friday, at no charge.

#### **7.4 Notice of Removal**

Notice of removals may now be filed electronically. Please see the instructions for filing a notice of removal under Procedures for Attorneys, E-Filing Adversary Proceedings.

#### **7.5 Stipulated Judgment to Simultaneously Commence/Conclude Adversary Proceeding**

Contact the appropriate judge's chambers or a Electronic Information Specialist for instructions for submitting such a judgment at 505-348-2500 or toll free at 866-291-6805 and press 3.

### **8 Clerk's Review and Case Management Procedures**

In the CM-ECF system, the case manager's role shifts from one focusing on docketing papers to one focused more on review of already-docketed entries. The review ensures that appropriate docket events have been used to take advantage of the system's reporting features which aid in effective case management.

Because an electronic filing immediately appears on the docket and because notice of that electronic filing is immediately transmitted via e-mail or through the Bankruptcy Noticing Center to other filers who are already on the case, notice of any problems encountered in the case manager's review of the filing is generally also entered on the docket and a Notice of Electronic Filing is produced and delivered. There are two main types of these notices. They are used as indicated in the descriptions of each:

#### **8.1 Notice of Error**

If a filer makes an error which the filer can fix, the Clerk's Office will enter a "Notice of Error" on the docket which explains the error and provides instructions for fixing it. Examples of errors and corrective actions which would fall into this category include:

- Document is filed in wrong case: file document in correct case
- Document filed is illegible or blank: file legible document
- Petition indicates filing fee is to be paid in installments but no application is filed: file application to pay filing fee in installments
- An amendment is filed without the debtors' verified signature: file a corrected

- amendment
- A document is erroneously filed in a case: file a withdrawal of the document

## **8.2 Notice of Adjustment**

An adjustment is made when the Clerk's Office can correct an error without affecting the integrity of the document. The notice of adjustment is entered on the docket to inform the record, the filer, and other parties on the case that the Clerk's Office has made an adjustment to clarify the entry. The entry and the associated Notice of Electronic Filing explain the adjustment and, if appropriate, will provide instructions for filing the document correctly in the future. Examples of errors and corrective actions which would fall into this category include:

- Wrong docket event was used: replace with correct docket event
- Document was linked incorrectly: correct the linkage
- Docket text is out of order: replace with corrected text

## **8.3 Other Actions Resulting From Review**

Other situations encountered during the review process may result in other action, such as a phone call to the filer to clarify the filer's intent or a call to warn the filer of a petition that it was not accompanied by a certificate of pre-petition budget and credit counseling briefing.

Another action may be to note that it appears that additional training may be helpful to the filer. These are private entries which do not appear on the public docket; no notice of electronic filing is associated with them. These entries are monitored and inspire our Electronic Information Specialists to contact the filer and offer training resources.

## **9 Identifying Parties Entitled to Notice of Entry of Orders and Ensuring that Addresses Are in the Case**

As indicated in section 1.6, proposed orders are to be submitted to the judges via e-mail. (Instructions may be found on our Website under "Procedures," or search for "Submitting Proposed Orders.") Because the Court will rely on the Notice of Electronic Filing and/or the certificate received from the Bankruptcy Noticing Center to serve as the certificate service of an order, judgment, memorandum opinion, or other document produced by the Court, the face of the order needs to show the persons entitled to notice of its entry. New Mexico Local Bankruptcy Rule 9021-1(d), Judgments and Orders – Entry of, reads as follows:

**(d) Approval; Listing of Those Entitled to Notice.** A judgment or order shall be approved by all parties appearing in the matter unless for good cause shown the court directs that such approval is not necessary. It shall also list the names, addresses, telephone numbers, facsimile number if any, and e-mail address, if known, of all attorneys and others entitled to

notice of entry of the judgment or order. The listing of attorneys shall include an indication of the party represented.

This listing should appear below the judge's signature line and may contain other notations as appropriate, such as "telephonically approved by" or "submitted by."

Here is an example of this portion of an order:

NOTICE TO:

*Submitted by:*

s/ submitted electronically

Elena Springer

Attorney for Debtor

123 First Street NW

Albuquerque, NM 87102-0123

Telephone: 505-333-1111

Facsimile: 505-333-1119

*Telephonically approved (on 09-15-06/ES) by:*

Jeremiah Block

Attorney for Vermont Motors

PO Box 333

Albuquerque, NM 87103-0333

Telephone: 505-444-2222

Facsimile: 505-444-2229

Office of the United States Trustee

421 Gold Avenue SW, Room 112

PO Box 608

Albuquerque, NM 87103-0608

Telephone: 505-555-3333

Facsimile: 505-555-3339

**10 Service and Notice of Electronically Filed Documents: CONSENT TO RECEIPT OF SERVICE AND NOTICE VIA E-MAIL**

**10.1 Consent Contained in ECF Account Registration Form**

Persons who electronically file papers in cases and proceedings consent, by signing the ECF account registration form, to receive service and notice via their registered e-mail address except for papers which are required by Fed. R. Bankr. P. 7004 (including Fed. R. Bankr. P. 9016 motions) or any other rule, to be served in another, specific, manner, such as by certified mail.

See New Mexico Local Bankruptcy Rule 9036-1, Service and Notice by Electronic Transmission, and also note Fed. R. Bankr. P. 9036 which provides, in pertinent part: "Notice by electronic means is complete on transmission."

## **10.2 Significance of Notice of Electronic Filing**

The Notice of Electronic Filing constitutes service of notice on the recipient. As such, it is critical that e-filers maintain a current e-mail address with the Court. You may update your e-mail address in CM-ECF. Under "Utilities," click on "Maintain Your ECF Account." The "Maintain User Account" screen will appear. Click on the button marked "Email information."

## **10.3 Filer's Responsibilities: Service and Certification of Service**

As indicated above, the Notice of Electronic Filing constitutes service of notice on the e-mail recipients, who are other e-filers in the case. No separate certification of service on these persons is required. The filer of a document is responsible for making service in another manner on other persons who are entitled to notice and for filing a corresponding certificate of service.

## **10.4 Certification of Service by the Court**

Certification of service of documents which are electronically filed by the Court will be documented by the Notice of Electronic Filing and/or the Bankruptcy Noticing Center's certificate of mailing. The Notice of Electronic Filing lists the persons who received notice by e-mail (with the e-mail address) and the BNC's certificate lists the persons who received notice by first class mail and their addresses.

# **11 Signatures**

## **11.1 Signature of Filer**

When registering to use the CM-ECF system, attorneys sign an agreement to the effect that use of their login and password (whether by themselves personally or by delegation to another person in their office) constitutes the filer's signature for purposes of Fed. R. Bankr. P. 9011. A document filed by electronic means may display an "/s/" with the name typed in the location at which the signature would otherwise appear; however, this is not a requirement.

## **11.2 Verified Signature of Person Other Than Attorney**

Documents which require the verified signature of a person other than the electronically filing attorney may be electronically filed utilizing scanning technology. Documents which require the verified signature of the debtor include the petition, schedules, statement of affairs, statement of intent, statement of social security number(s), reaffirmation agreement, an

application to pay filing fee in installments, and amendments to the petition<sup>3</sup>.

Please carefully review the various debtor signature forms for electronically filed petitions you will find on the Court's Website (select "Forms," and then click on "Debtor's Signature Pages"). These forms are designed to be used upon the initiation of the case (or filing schedules after a skeleton petition has been filed), not for subsequent or unrelated documents, such as an amendment to the petition or an amended statement of intention. In these instances, you will need to craft your own signature page, use the one produced by your software, or prepare the Debtor's Unsworn Declaration Under Penalty of Perjury (following the form posted on the Court's Website).

Scanning may also be utilized for documents containing verified signatures of other persons, e.g., reaffirmation agreements and affidavits:

“. . .an electronically filed affidavit would have to be scanned in so that the required signatures would be visible on the “official” electronic document.”

*Clark v. Ford Motor Credit Co. (In re Clark)*, Case No. 7-03-15342 M A, Adv. No. 03-1381 M, docket No. 38, United States Bankruptcy Court, District of New Mexico, August 10, 2004, at [www.nmcourt.fed.us/usbc](http://www.nmcourt.fed.us/usbc).

## **12 For More Information**

A wealth of information is available from the Court's Website:

[www.nmcourt.fed.us/usbc](http://www.nmcourt.fed.us/usbc)

Use the search feature to find information on your area of interest.

If you do not find the information you need on our Website, you may also call the Clerk's Office at 505-348-2500, press 0 or toll free at 866-291-6805 – any staff member can provide assistance or obtain the information you need. Comments, suggestions, and any inquiries regarding these procedures may be directed to the Court's Electronic Information Specialists at 505-348-2500, press 3.

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<sup>3</sup>Fed. R. Bankr. P. 1008.