

How to File A Motion to Strike Petition with Legal Effect that No Case was Commenced

Issue Date

March 7, 2011

Purpose

This procedure is written to guide the electronic filer through the process of filing a motion to strike petition requesting that the petition be stricken with the legal effect that no case was commenced.

Policy

NM Local Bankruptcy Rule 5003-1 (c) provides:

(c) **Official Record.** The official document of record is the electronic document stored in the court's database.

The judges have determined, effective March 7, 2011, that the Clerk's Office approach to correcting case opening data entry errors should be based on this rule.

Process

When there are differences between the debtor information entered in CM-ECF and the information on the petition, the Clerk's Office changes the debtor information entered in CM-ECF to match the information on the official document of record.

The attorney is responsible for determining whether the error is in the data entered into CM-ECF or in the petition pdf upload. When the voluntary petition electronically filed as document #1 was uploaded into CM-ECF in error resulting in a case being commenced for the wrong debtor, consider filing a motion to strike petition.

Procedure

STEP	ACTION
1	Prepare the motion to strike document requesting that the petition be stricken with the legal effect that no case was commenced.
2	Log in to CM/ECF at https://ecf.nmb.uscourts.gov

STEP	ACTION
	Click on the Bankruptcy menu option in the blue menu bar.
3	The Bankruptcy menu displays. Click on the Motions/Applications hyperlink.
4	Enter case number and click Next. Select " Strike (Motion). " Click on the Next button.
5	Select debtor(s) as party and upload motion pdf file. Note: remember to view the file first in the browse window to ensure the correct pdf file is uploaded.
6	Select the box to Refer to existing event(s)? <ul style="list-style-type: none"> • Select misc from the category to which your event relates, and click Next. • Select the box for document #1, the voluntary petition, and click Next. • review final docket text; if okay, click Next.
7	Draft an Order granting the motion and submit it to the appropriate judge. A sample order is posted on the Court's website at: http://www.nmcourt.fed.us/usbc/forms-attorney Instructions for submitting a proposed order are at: http://www.nmcourt.fed.us/usbc/proposed-orders
8	Call the appropriate chambers to expedite entry of order.

Whom to Contact for Help

Please contact the Court's Electronic Information Specialists for assistance at 505-348-2500 or toll-free at 866-291-6805 - select option 3. The help desk hours are 8:30 a.m. to 4:30 p.m., Monday through Friday.