File a Notice of Removal

Issue date

July 1, 2010

Purpose

This procedure is written to guide the electronic filer through the process of filing a notice of removal.

Context

Fed. R. Bankr. P. 9027 provides guidelines regarding the actions to be taken when filing a notice of removal. A notice of removal is an adversary proceeding and the proceeding should be styled *exactly* as the existing lawsuit in the lower court action.

A filing fee is required pursuant to 28 U.S.C. § 1930, unless the United States, the debtor, or a child support creditor or its' representative is the party seeking the removal. The filing fee must be paid on-line by the filer on the same day that the transaction is filed before 9:00 p.m., or you will be locked out of the system the next day.

Whom to Contact for Help

Please contact the CM/ECF help desk at 505-348-2500 or toll-free at 866-291-6805 and select option 3 if you need assistance filing a notice of removal. The help desk hours are 8:30 a.m. to 4:30 p.m. Monday through Friday.

Before Getting Started

You will need the following:

STEP	ACTION
1	A valid credit card. Acceptable credit cards are VISA, MasterCard, American Express, Discover, and Diners Club. Debit cards from the above-mentioned providers that do not require a "PIN" code will also be accepted.
2	Review the documents to ensure they meet the filing requirements.
3	Convert the complaint, exhibits, any summonses, and answers in removed case to portable document format (PDF). • The Complaint PDF must be filed as the main document

STEP	ACTION
	with any exhibits such as the Summonses in removed case and Answer being submitted as attachments. ● The maximum file size for any PDF file is 2.5 megabytes. If any file exceeds 2.5 MB, you may need to attach supporting documentation as separate PDF files. Note: See the section "Breaking a PDF Document into Small PDF files" in the "Adobe Acrobat PDF Tips and Suggestions" procedure at http://www.nmcourt.fed.us/usbc/files/adobeacrobattipsandsuggestions.pdf

File Notice of Removal

STEP	ACTION
1	Log in to CM/ECF at https://ecf.nmb.uscourts.gov/ ☐ Click on the **Adversary** menu option in the blue menu bar.
2	The **Adversary Events** menu displays. ☐ Click on the **Open AP Case** hyperlink.
3	The **Open Adversary Case** screen displays: • **Case Type** defaults to ap; • **Date Filed** defaults to current date; • **Complaint** defaults to "y" (yes). ☐ **Change the Complaint default from "y" to "n" (no)**. ☐ Click on the Next button. The Clear button will return all selections to their default values.
4	The **Open Adversary Case** screen displays: ☐ **Lead case number** box: enter the related bankruptcy case number. Type the case number as yy–xxxxx format, including the hyphen. ● **Do not** add chapter or judge/location designation.

STEP	ACTION
	Note: A lead case number should always be entered. Do not leave blank. If the lead case number is not in the database as a valid case number, you will not be able to proceed with opening the adversary proceeding. The system will display a “cannot find case” message. If you receive this message, contact the CM/ECF help desk for assistance. ● **Association type** defaults to Adversary. Always use the default Adversary. ☐ Click on the Next button to continue with adversary proceeding opening.
5	The **Open Adversary Case** screen displays: ● The case will be assigned to the divisional office and judge based on the lead case number entered. ● If the related bankruptcy case is pending, the system will display a message similar to this: “Case is assigned to **Albuquerque** Division, Judge **Jacobvitz** based on the lead Bankruptcy case 07-10019-j7.” ● If the related bankruptcy case is closed, the system will display a warning that the case is closed. ☐ Click on the Next button to submit this information and continue with case opening.
6	The **Open Adversary Case** screen displays. The display screen appears with the following message: REMINDER: ON THE PLAINTIFF INFORMATION SCREEN, CLICK THE ATTORNEY BUTTON TO ADD THE ATTORNEY FILING ON BEHALF OF THE PLAINTIFF. NOTE: DO NOT enter an attorney for any defendant. These entries will be made as papers are filed on behalf of a defendant.

STEP	ACTION
	Important: The display message above is not applicable to filing a notice of removal. An attorney filer representing a defendant can electronically file the notice of removal and correctly add the Plaintiff, the attorney for the Plaintiff if known, the Defendant, and associate herself/himself as the attorney for the defendant. ☐ Click on the Next button to submit this information and continue with case opening.
7	The **Open Adversary Case - Search for a Plaintiff** screen displays. ☐ Search for the filing Plaintiff. ● If plaintiff is the debtor and you have the debtor's Social Security Number (ssn), enter it. ● If plaintiff is not the debtor, search by name using the following tips: • For an individual, enter first and last name. • If searching a business or company name, enter the company name in the Last Name field. • It is not necessary to use an asterisk (*) in CM-ECF to perform a search; partial names can be searched. • Format social security number or tax ID with hyphens. • Searching is not case sensitive (use Smith or smith). If an apostrophe or hyphen is part of the name, include it (O'Brien). Omit other punctuation, such as periods or commas. • Try alternate search clues if your first search is not successful. ☐ Click on the Search button. The Clear button returns selections to default values.

<table>
<tr><th>STEP</th><th>ACTION</th></tr>
<tr><td>8</td><td>Party Search Results:

<table>
<tr><th>IF</th><th>THEN</th></tr>
<tr><td>Party’s name appears</td><td>Select the party’s name only if the party’s name and ssn are an exact match.

☐ Click Select name from list. Follow the steps listed in step 9.</td></tr>
<tr><td>No person found or the party’s name is not an exact match</td><td>Click Create New Party button.

☐ Follow the steps listed in step 10.</td></tr>
</table>
</td></tr>
<tr><td>9</td><td>If you selected a party from the list, the Plaintiff Information screen displays with the party’s name and address if this information was previously entered.

● It is not necessary to add or change the filer’s information if the name and ssn is an exact match and there is no address information.

● Regardless of whether or not the address information is an exact match or not, it is necessary to remove the address information for the Plaintiff.

☐ Delete the information entered in the following fields:
• address1,
• city,
• state,
• zip, and
• county should be changed to blank.

Note: The address of record will be that of the attorney representing the plaintiff.

☐ Party Text: Enter any other descriptive information for the Plaintiff, (e.g., a New Mexico corporation, Personal Representative of the Estate, etc.).</td></tr>
</table>

STEP	ACTION
	● Do not enter 'Plaintiff' as descriptive information in party text. This information will automatically appear after the Plaintiff's name on the docket sheet. ☐ **Role in Bankruptcy**: Select the party's role in the related bankruptcy case. ☐ If the party has **Alias** names, click on the Alias button. NOTE: **Do not** click on the Alias button unless you need to add an alias name for the party. If you click on the Alias button and you do not have an alias name to add, you will need to abort the process by clicking on the Adversary option in the blue menu bar. Then start over. ● The Alias Information screen will be displayed. Up to five alias names can be entered in the system. ☐ Enter all alias names. ☐ Select the correct **Role** type for each alias: • aka = also known as • dba = doing business as • fdba = formerly doing business as • fka = formerly known as ☐ Click on the Add Alias button to add the alias name and to return to the **Plaintiff Information** screen. ☐ At the **Plaintiff Information** screen, click on the Review button to review the alias names you have added. ☐ To exit the **Review attorneys** and **aliases** screen, click on the Return to Party screen button. ☐ Click on the Attorney button to add the attorney representing the Plaintiff in the state court proceeding. Proceed to STEP 11 to add the attorney of record.
10	The **Plaintiff Information** screen displays when there is no match found in the database, and you have clicked on the Create New Party button. The fields and buttons are listed below in order as they appear on this screen; see instructions for each. • Office: Leave blank.

STEP	ACTION
	• Address fields: Leave blank as the address of record will be that of the attorney representing the plaintiff. • Country, Phone, Fax, E-mail: Leave blank. ☐ **Party Text**: Enter any other descriptive information, (e.g., a New Mexico corporation, Personal Representative of the Estate, etc.) ☐ **Role in Bankruptcy**: Select the party's role in the related bankruptcy case. ☐ If the party has **Alias** names, click on the Alias button. NOTE: **Do not** click on the Alias button unless you need to add an alias name for the party. If you click on the Alias button and you do not have an alias name to add, you will need to abort the process now by clicking on the Adversary option in the blue menu bar. You will then need to start ● The Alias Information screen will be displayed. Up to five alias names can be entered in the system. ☐ Enter all alias names. ☐ Select the correct **Role** type for each alias: • aka = also known as • dba = doing business as • fdba = formerly doing business as • fka = formerly known as ☐ Click on the Add Alias button to add the alias name and to return to the **Plaintiff Information** screen. ☐ At the **Plaintiff Information** screen, click on the Review button to review the alias names you have added. ☐ To exit the **Review attorneys** and **aliases** screen, click on the Return to Party screen button.
11	To Add the Attorney at the **Plaintiff Information** screen: ☐ Click on the Attorney button to add the Plaintiff's attorney. ● The **Search for an Attorney** screen is displayed.

STEP	ACTION
	☐ Enter the attorney's last name. ☐ Click on the Search button. ☐ At attorney search results screen, select the attorney’s name representing the Plaintiff. This will associate the attorney to the Plaintiff. ☐ Click on the Select name from list button.
12	The **Attorney Information** screen is displayed. ☐ Verify the attorney information. ☐ **Lead attorney** defaults to “yes,” **change to “no.”** ☐ Click on the Add attorney button. ● You may receive Warning messages that fields have been left blank. ☐ Click the OK button for each. ☐ Add all attorneys representing the Plaintiff before clicking on the Submit button.
13	The **Plaintiff Information** screen displays again. ☐ Ensure any additional party text has been entered, if applicable. ☐ Ensure the correct **Role** type in the **Bankruptcy** has been selected for the party. ☐ Click on the Submit button. ● You will receive Warning messages alerting you to the blank fields. Continue through those messages. ☐ Click on the OK button for each. ☐ Continue this process until all Plaintiffs have been entered. ☐ Click on the Add Attorney button for each Plaintiff added to the case.

STEP	ACTION
	☐ Click on the End plaintiff selection button once you have entered all plaintiffs for the case.
14	After the plaintiffs have been added, **Add Defendants** to the case in the same manner that the plaintiff(s) were added in STEPS 8 through 13 above. NOTE: **Add** the attorney for the defendant if the attorney has filed a responsive pleading in the state court proceeding. ☐ After the last party has been entered, click on the End defendant selection button.
15	The **Open Adversary Case** screen displays. Complete the following fields: ☐ Select the **Party Code** from the pick list (based on whether the US is a party in the case): • U.S. is a Plaintiff • U.S. is a Defendant • U.S. is not a Party (system defaults to this selection) ☐ Select **01 (Determination of removed claim or cause)** as the **Nature of Suit** from the pick list. ☐ **Rule 23** (class action): defaults to “n.” Select “y” if the proceeding is a class action. ☐ **Jury Demand** (Defaults to None): If a jury is requested, select the appropriate party making the demand: • Both • Defendant • None • Plaintiff ☐ **Demand**: If there is a dollar amount demanded, enter the amount in thousands the nearest thousand. For example, if the demand is $50,000, enter “50" in this field. ☐ **State Law**: The system defaults to “n.” Change to “y” only if case involves a substantive issue of state law. ☐ Click on the Next button.
16	The **Filer Type** screen displays, which begins the determination if a fee is due, may be deferred, or will be waived.

STEP	ACTION
	☐ Answer y or n, to the following question: *Is the fee DEFERRED or EXEMPT for one of the reasons below:* • the Plaintiff is a trustee or debtor in possession and there are no funds in the estate; or • the plaintiff is the United States, debtor, child support creditor or its representative. ☐ Click on the Next button.
17	If you answered yes, the next screen displays “deferred” or “exempt,” select one of the following: • **deferred** if the plaintiff is a trustee or debtor in possession and there are no funds in the estate; **or** • **exempt** if the plaintiff is the United States, debtor, child support creditor or its representative. ☐ Click on the Next button.
18	The **Docket Event** selection screen displays. ☐ Select Notice of Removal. ☐ Click on the Next button.
19	The **Select the pdf document** screen displays. ☐ Click on the Browse button and locate the pdf file. ☐ Right click on the pdf file and open it to verify that it is the correct document. Close the Adobe Acrobat screen by clicking the X in the upper-right corner. Important: Once you submit a document for filing in CM-ECF, the document is officially filed and entered on the docket. For this reason, **always open and view the pdf file just before you upload it for transmission** to the CM-ECF database. ☐ If there are attachments, click on the **Yes** radio button. ☐ Click on the Next button.
20	The **Select One or More Attachments** screen displays if

STEP	ACTION
	you clicked **Yes** on the radio button for attachments. ☐ Click on the Browse button and follow instructions in STEP 19. ☐ Choose the desired combination of <u>Type</u> and/or <u>Description</u> to create the text for this portion of your complaint entry. *For example, choosing Type "Exhibit" and entering the Description "1" will produce this entry: (Attachments: # (1) Exhibit 1)*. ☐ Click on the Add to List button. The screen reloads, and the path and file name of your attachment appear in the add-to box. Repeat this process to upload additional attachments. ☐ Click on the Next button when finished uploading attachments.
21	Regardless if you answered "Yes" or "No" to the question, the screen displays the filing fee associated with this filing. ☐ Click on the Next button. ☐ Click on the Next button again to display Docket Text: Final Text.
22	The **Docket Text**: Final Text screen displays. ● Proof the entry for accuracy. ● Verify that you have redacted Social Security or taxpayer-identification numbers; dates of birth; names of minor children; and financial account numbers, in compliance with Fed. R. Bankr. P. 9037. This requirement applies to all documents, including attachments. ☐ Click on the Next button if the final text is accurate and you have redacted.
23	The **Notice of Electronic Filing** screen displays. Print a copy of the screen for your records. This notice is evidence of the filing and provides the adversary proceeding title and number, the date and time of filing, the filer's name, and the document description. ● Clicking on the adversary proceeding number hyperlink will display the docket report for the adversary proceeding.

STEP	ACTION
	● Clicking on the main case number hyperlink will display the docket report for the main case. ● Clicking on the document number hyperlink will display the pdf image of the document just filed. ● If you have not already associated your PACER log in/password with your CM-ECF log in/password, the system will ask for your PACER log in and password. ● PACER will assess a fee (8 cents per electronic page) to view/print the document or docket report. To obtain your free look, print the document from the Notice of Electronic Filing (a/k/a "NEF") you receive in your e-mail in-box when you file documents electronically. ● To obtain a PACER account, go to http://pacer.psc.uscourts.gov/ or call the PACER Service Center at (800) 676-6856.
24	The **Electronic Payment** prompt displays. *(Exception: The screen does not display when answering YES in STEP 16.)* ☐ Select Pay Now to make payment. ☐ OR Continue Filing to file other cases prior to making payment or to exit the module. ● Refer to the **CM-ECF Guide to On-line Credit Card Payments** for an explanation of the electronic payment module found on at http://www.nmcourt.fed.us/usbc/files/paygovprocd.pdf
25	You have completed the case opening process. File the following documents separately in chronological order: 1. The state or federal court case docket sheet 2. Pending motions 3. If applicable, the Corporate Ownership Statement For items 1 and 2 use the event code "Document" For number 3 select Corporate Ownership Statement

S:\Electronic Information Management Team\Procedures\Notice of Removal\File a Notice of Removal.wpd