

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

**ELECTRONIC FILING PROCEDURES**

*CM-ECF Version 2.7.3, last updated 06-05-2006*

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## **1 Introduction**

### **1.1 Authority**

These procedures are maintained by the Clerk pursuant to New Mexico Local Bankruptcy Rule 5001-1(b). Inquiries regarding these procedures may be directed to Sharon A. Kologie at 505-348-2443, to Margaret Grammer Gay at 505-348-2438, or to any member of the Clerk's Office Operations Department staff at 505-348-2500.

### **1.2 Mandatory Electronic Filing**

New Mexico Local Bankruptcy Rule 5005-4(a), amended effective March 1, 2005, reads: "**a. Filing by Electronic Transmission Required.** Attorneys and trustees shall file all papers by electronic transmission in accordance with guidelines established by the court."

### **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**

First, electronically file the motion to file a document under seal. If the motion is granted, the Court will enter an order which authorizes the filing of sealed document. Print out a copy of the order and the associated notice of electronic filing. Attach the paper copy of the order to the paper document to be sealed, and deliver these items to the Clerk of the Bankruptcy Court. The Clerk will then scan and docket the sealed document in a manner which ensures that only court personnel can access the image. Once the image has been checked, the paper document will be shredded.

Since the notice of electronic filing associated with the sealed document will not give recipients access to the image of the document, the submitter of such a document will need to make and certify service in another manner.

#### **1.3.2 Oversized Exhibits**

Oversized exhibits are items which are larger than 8 1/2" x 11" 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.

Unless otherwise directed, attaching any exhibits to documents filed with the Court is strongly discouraged by the judges. The Court's experience is that many exhibits do not meet scanning requirements published in the Notice to Practitioners dated July 21, 2000 (see "News and Notices" on our website). Further, they are usually not necessary for the Court's consideration of a matter. If you have any questions about the need to attach exhibits to a document, please consult with the appropriate judge's chambers staff.

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

Please remember that NM LBR 7026-1(c) provides as follows:

- c. Non-filing of Discovery Materials.
  - (1) Interrogatories, requests for production or inspection, requests for admission and responses thereto are served upon other parties but are not filed with the court.
  - (2) Notice to take a deposition or proof of service of such a notice is not filed with the clerk except when the adequacy or content of the notice is the basis for a motion, or response to a motion, relating to Bankruptcy Rule 7030 or 7031.
  - (3) Deposition transcripts are not filed unless otherwise ordered.
  - (4) A certificate of completion of deposition is not filed unless otherwise ordered.

### **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 2.2 of these procedures) and ensure that you fulfill the hardware and software requirements set forth in section 4.4. 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/web/BCDOCS/bcindex.html](http://www.nmcourt.fed.us/web/BCDOCS/bcindex.html). (Click on "Court Forms.") 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

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<sup>1</sup>December 14, 2004, Notice to Practitioners: *Mandatory Submission of Proposed Orders Via E-mail*. Effective January 1, 2005, attorneys are required to submit proposed orders via e-mail. Orders should be submitted to Judge McFeeley at [mcfeeley@nmcourt.fed.us](mailto:mcfeeley@nmcourt.fed.us), and to Judge Starzynski at [starzynski@nmcourt.fed.us](mailto:starzynski@nmcourt.fed.us). Instructions may be found on our website under "Procedures."

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(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*.

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 "General Information" on the Court's website.

## **2 New Mexico Will Be Using the CM-ECF Electronic Filing System June 13, 2006**

The Court is planning on a June 13, 2006, "go-live" date for the CM-ECF electronic records and electronic filing system developed by the Administrative Office of the United States Courts. Prior to adoption of the CM-ECF system, we used the New Mexico Federal Courts' ACE system for electronic filing.

### **2.1 ACE Attorney Account Log ins and Passwords "Grandfathered" – NM ECF Training Required**

Attorneys who have an ACE attorney account which allows access to Bankruptcy Court records will be able to use the same log in for the CM-ECF system. CM-ECF will truncate the password to 8 characters. Attorneys with an ACE account will still need to obtain a PACER account and will also need to complete the appropriate training. See section 3 for training information.

## **2.2 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.**

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

The Judicial Conference of the United States has imposed an electronic public access user fee, which as of May 1, 2006, is \$.08 per page. The fee is assessed through PACER. Information regarding PACER billing is available on the PACER Service Center website.

## **2.4 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. (Current ACE attorney account holders, see section 2.1.)

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.

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. Training for limited use filers is available via on-line tutorials and manuals (see section 3).

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

First, complete the training requirements outlined in section 3.

Second, complete the portion of the Test E-filing Certification form appropriate to your practice: attorney for debtors or attorney for creditors. The Test E-filing Certification form may be found under "About CM-ECF" on the Court's website: [www.nmcourt.fed.us/web/BCDOCS/bcindex.html](http://www.nmcourt.fed.us/web/BCDOCS/bcindex.html). Click on "Getting Started," and then on "Register for CM-ECF."

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

Fourth, submit the test e-filing certification and the registration form via e-mail to [web\\_ntp@nmcourt.fed.us](mailto:web_ntp@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 log in and password via e-mail.

#### **2.4.2 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, as indicated above) and submit it via e-mail to [web\\_ntp@nmcourt.fed.us](mailto:web_ntp@nmcourt.fed.us). If your registration form has been properly completed and signed, your account will be activated and you will receive your log in and password via e-mail.

#### **2.4.3 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 Clerk's Office will contact you to make arrangements for such training.

As indicated in section 3.5, if there are problems with the documents you electronically file, the Clerk may restrict your access to the CM-ECF system.

## **2.5 Use of Log Ins and Passwords; Security Concerns**

Any log in name and password required for electronic filing shall be used only by the person to whom the log in 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. For more information, please visit the website for the Carnegie Mellon University CERT Coordination Center, at [www.cert.org/homeusers](http://www.cert.org/homeusers), and the National Cyber Security Alliance website at [www.staysafeonline.info/index.html](http://www.staysafeonline.info/index.html).

### **2.5.1 Multiple Log Ins Required for Multiple Filers in Same Organization**

The CM-ECF system does not allow for simultaneous use of the same log in for electronic filers. 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.

### **2.5.2 Compromised CM-ECF Account**

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

### **2.5.3 Changes in Address, Telephone Number, Fax Number, or E-mail Address; Changing Log In and/or Password**

If your address, telephone number, fax number, or e-mail address changes, please observe the requirements of NM Local Bankruptcy Rule 9010-1, Notice of Appearance, by filing notice of any changes.

You must also update your ECF account. 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 log in and/or password, click on the "More user information" on that same "Maintain User Account" screen.

## **2.6 Change to Wording of Notices 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 20 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.

## **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 Sharon A. Kologie (505-348-2443) or Paul D. Yeomans (505-348-2542).

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

Attorneys who wish to file bankruptcy petitions are required to work through the ECF tutorials and to successfully complete a series of test exercises as outlined in the "Test E-filing Certification" document. This certification must be completed and submitted with the ECF Registration Form. Both forms are available from the Court's website: [www.nmcourt.fed.us/web/BCDOCS/bcindex.html](http://www.nmcourt.fed.us/web/BCDOCS/bcindex.html). Click on "Getting Started," and then on "Register for CM-ECF."

### **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 account.

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

Limited use filers are strongly encouraged to complete the on-line tutorials which are available from the Court's website: [www.nmcourt.fed.us/web/BCDOCS/bcindex.html](http://www.nmcourt.fed.us/web/BCDOCS/bcindex.html). Click on "about CM-ECF," then on "Getting Started," and then on "Register for CM-ECF."

### **3.5 Training Classes**

The attorney training session takes three hours. Staff members are welcome, and encouraged, to attend. Schedules for training may be found on the Court's website. Under "Electronic Services," click on "CM-ECF."

### **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 "two strikes and you're out" approach.

## **4 Payment of Fees**

Much like an online merchandise order, the CM-ECF program includes an interactive credit card module called Pay.gov which appears during the course of the electronic filing process for documents which require payment of a fee. American Express, Diner's Club, Discover, MasterCard, and Visa credit cards may be used, and debit cards with the Visa or MasterCard logo are also accepted. Pay.gov allows users to pay the filing fee through a secure environment, to review the history of credit card transactions, to review outstanding payments due to the court, and to make online payment of outstanding fees. CM-ECF users will not need to provide credit card information to the Court. Previous documentation of credit card accounts used with ACE will be destroyed.

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

More information about Pay.gov, including the step-by-step process, is available in the document, "CM-ECF Guide to On-line Credit Card Payments," which can be found on the Court's

website under "Electronic Services."

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

The payment screen pops up upon the successful submission of a document which requires a fee. (**Note:** Pop-up blocking software will in all likelihood interfere with your ability to view the payment screens – you may need to refer to your software documentation to either turn off the blocking or to set it to allow pop-up screens.) At this point, you may choose to make the payment or to accumulate fees due.

If you make payment item-by-item, you will enter the credit card information and click on "Submit Payment." Once payment via your card has been authorized, the fee is paid directly to the United States Treasury. A transaction receipt displays and is immediately docketed to the case.

If you choose to continue filing and pay later, the pop-up window will disappear and you can continue filing. You will see this pop-up window after each transaction which requires a fee and it will include all of your accumulated Internet payments due. Final payment for all accumulated fees may be made when filing the last document requiring payment of a fee or through CM-ECF's Internet Payments Due report located under "Utilities."

**Be careful:** If you minimize the pop-up window instead of letting it disappear after you choose "continue filing," you won't be alerted to fees due for additional filings. Or, if you choose "continue filing" and don't file any more documents which require payment of a fee, you won't see the pop-up screen again. You must then check the Internet Payments Due report mentioned above to pay any fees due or you risk being locked out of CM-ECF.

**Also beware:** Make sure that your credit limit will cover your daily accumulation needs. If the charge for payment of accumulated fees is rejected, all of the associated filings will be affected.

Should you encounter any problems with making payments during the course of filing documents, please call the Clerk's Office for assistance (505-348-2500 or toll free at 866-291-6805).

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

If you choose the accumulation option and fail to pay accumulated fees by 9:00 p.m. Mountain Time, the CM system will generate a report of unpaid fees. Court staff will place a "lock-out" on the CM-ECF accounts of filers with unpaid fees from the previous business day. The only feature available to locked-out users is to make payment.

If an attorney has filed a bankruptcy petition and has failed to pay the fee by 9:00 p.m. Mountain Time the day of filing, Court staff will file a Notice of Intent to Dismiss Case which will give the filer until the end of the next business day to pay accumulated fees. If the fees are not paid within

the time frame indicated in the notice, an order dismissing the case will be entered immediately. A similar approach will be taken for other fee items where payment is not timely made.

#### **4.3.1 Getting Your CM-ECF Account "Unlocked" After Payment of Fees**

Once you have paid accumulated fees, call the Clerk's Office at 505-348-2500 (or toll free at 866-291-6805) and ask to speak to the person who unlocks CM/ECF accounts.

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

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

When a document is filed electronically, 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**

An "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. NM LBR 5005-1(a) applies. That is, any pleadings or other documents filed after the close of business, but before 8:00 a.m. the following business day, will be deemed filed at midnight the previous business day. As set out in as set out in section 2.2 of the Clerk's Practice and Procedure Guide (CPPG) (2nd ed.: October 1, 1996), the "drop box rule" does not apply when an order or notice specifies a time and date by which to file a document.

Paper documents will be 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.

General instructions for seeking expedited consideration of a matter may be found in section 5.2.13 of the Clerk's Practice and Procedure Guide (CPPG) (2nd ed.: October 1, 1996). The CPPG is posted on the Court's website under "Procedures." Follow the directions for giving notice given to you by the judge's office.

#### **5.5 No Refund of Filing Fees for Duplicate Filings**

Judicial Conference policy prohibits the refund of fees due after filing, even if the party filed the item in error.

#### **5.6 Copy Requirements**

The Clerk's copy submission requirements do not apply to electronically filed documents. See section 10.3 for the filer's service responsibilities.

### **6 The Electronic Filing Process**

Complete instructions for electronic filing are posted on the Court's website under "Electronic Services."

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

Lists of the hardware and software requirements for electronic filing are posted on the "Electronic Services" page of the Court's website.

#### **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).

We provide a scanner and the software needed to print scanned images to *pdf*. 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.

Instructions for use of the equipment and software in the file viewing room are provided; limited assistance will be available from customer service clerks.

### **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 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 select the "no fee" stay motion (for child support creditor) event. This event has been designed to allow filing of the motion without payment of a fee.

Until the Court is able to devise a similar "no fee" approach for these items, if you are filing a motion to compel abandonment or a motion to withdraw the reference on behalf of a child support creditor or its representative, you must submit the pleading in paper along with a completed Form B281 as an attachment to the pleading.

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.

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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.

## **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 60 days of the date of filing of the document. If no correction of the scanned image is requested by the filer within 60 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.

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

The Court's analysis of our experience with electronic filing over the past seven years 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).
- (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 Petition, Chapter 13 Plan and Related Motions Document, and for Filing Documents in a Case Where the Subject Person is Not Listed**

## **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 which indicates "revised for CM-ECF."

## **7.2 Chapter 13 Plan and Related Motions Document**

The Clerk anticipates that NM LBR 3015-3, Chapter 13 – Confirmation, will be amended to provide that if you file the chapter 13 plan and related motions document at the same time you file a chapter 13 petition, the Clerk will give notice of the deadline for filing objections to confirmation and the motions, with a copy of the plan/motions document attached, for you. If the chapter 13 plan and related motions document is not filed within a few minutes of the filing of the petition, you will be responsible for sending the notice and plan/motions document to all creditors and other parties in interest.

The CM-ECF Notices option will offer two options for the notice – one designed for the Clerk's Office to send, and one designed for the attorney to send, the main difference being 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 (as preliminary or final) will appear on the screen during the Judge/Trustee Assignment process and will also be entered on the case docket.

## **7.3 Filing Documents in a Case Where the Subject Person is Not Listed**

There are occasions when a filer submits a document on behalf of a person who is not listed in a case. This may happen in cases where the debtor has failed to schedule a creditor or the person has an interest in a case which was unknown to the debtor. Ordinarily, an event such as a notice of appearance or a request for notice will allow the filer to add a listing for a person who was not already listed in a case.

At this time, there are several events in the attorney menus of the CM-ECF system which do not automatically add a person to the case mailing list. Until this problem is resolved, it may be necessary for the Clerk's Office to manually add a person to the mailing list. A person must be included in the mailing list before a proof of claim may be filed on behalf of that person. If you encounter this

problem, call the Clerk's Office for assistance (505-348-2500 or toll free at 866-291-6805).

## **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 also entered on the docket and a Notice of Electronic Filing is produced and delivered. There are two types of these notices. They are used as indicated in the descriptions of each:

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

If a filer makes an error which the filer can fix, the Clerk's Office will enter "Notice of Possible 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:

- Signature page is not submitted with petition: submit signature page
- 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 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.

## **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. (See "E-mail Proposed Orders" under "Procedures" on the Court's website.) 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. NM LBR 9021-1(a), Form of Judgments and Orders.

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:*

Elena Springer  
Attorney for Debtor  
123 First Street NW  
Albuquerque, NM 87102-0123  
Telephone: 505-333-1111

*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

Office of the United States Trustee  
421 Gold Avenue SW, Room 112

PO Box 608  
Albuquerque, NM 87103-0608  
Telephone: 505-555-3333

Gino's Mechanical  
1234 South Highway 85  
Belen, NM 87002-3624  
Telephone: 505-666-4444

Abel C. Smith  
Attorney for NM Taxation & Revenue Department  
973 Mountain Circle  
Albuquerque, NM 87106-5583  
Telephone: 505-777-5555

## **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.

The Clerk anticipates amendment of New Mexico Local Bankruptcy Rule 7005-1, Service and Notice by Electronic Transmission, to provide that service and notice by electronic transmission is mandatory for attorney users of CM-ECF.

Also note the December 1, 2005, amendment to Fed. R. Bankr. P. 9036 which provides, in pertinent part: "Notice by electronic means is complete on transmission." The Clerk anticipates amendment of NM LBR 9036-1.

### **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.

#### **10.5 Other Changes Resulting From Amendment of NM LBR 7005-1, Service and Notice by Electronic Transmission**

The Clerk anticipates that there will no longer be provision for service by facsimile, and the Clerk will no longer maintain a list of attorneys who have agreed to receive service and notice from other attorneys via e-mail or by facsimile.

#### **10.6 Temporary Duplication of Notices – One from Notice of Electronic Filing, and One from the Bankruptcy Noticing Center**

Until the Court can implement an upgrade to the CM-ECF system, registered filers will receive both an e-mail Notice of Electronic Filing (which contains a hyperlink to the document filed, available for print-out or storage) and a printed copy of the document from the Bankruptcy Noticing Center. We hope to have this duplication eliminated by late 2006.

### **11 Signatures**

#### **11.1 Signature of Filer**

Use of the log in name and password required to submit documents electronically constitutes the filer's signature for purposes of Fed. R. Bankr. P. 9011. Filers should enter "s/submitted electronically" or a similar notation on their signature line so that when the document is printed out, there will be a clear indication that the document was submitted electronically.

#### **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, non-filing spouse certification, 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 "Electronic Services," and then, under "Instructions for E-filing, click on "Debtor's Signature Forms"). 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.

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 <http://www.nmcourt.fed.us/web/BCDOCS/bcindex.html>.

## **12 For More Information**

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

*[www.nmcourt.fed.us/web/BCDOCS/bcindex.html](http://www.nmcourt.fed.us/web/BCDOCS/bcindex.html)*

Click on "Electronic Services" and select the area of interest.

If you do not find the information you need on our website, you may also call the Court's Operations Department at 505-348-2500 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 Sharon A. Kologie at 505-348-2443 or to Margaret Grammer Gay at 505-348-2438.

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See F:\procedure\EF\CM\revision history  
Initial: 05-09-06

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

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2nd revision: 05-11-06  
3rd revision: 05-12-06: 3.4, 4.2  
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