

**ATTORNEY'S PROCEDURE FOR MOTION  
TO STRIKE WRONG DOCUMENT FILED AS PETITION  
AND SUBSTITUTE CORRECT PETITION FOR DOCUMENT #1**

*Revised April 25, 2008*

**Introduction**

When the pdf file uploaded as the petition in bankruptcy case opening is NOT a petition *OR* is a petition for someone other than the debtor named in CM-ECF, the filer will need to file a motion to strike the wrong document filed as petition (document #1) and substitute the correct petition. When the Clerk's Office discovers the error, the Clerk's Office will docket and send a *Notice of Error* to the attorney who filed the case. If the attorney does not follow the Clerk's instructions in the Notice of Error, the Court will enter an order to show cause why the case should not be dismissed.

**Docket Correct Petition**

**Step 1** If you have not already refiled the petition to correct the error, start here. If you have refiled the petition, start at Step 2.

- Log in to CM-ECF at <https://ecf.nmb.uscourts.gov/>
- Click on the **Bankruptcy** hyperlink in the blue CM-ECF menu bar.
- Click on the **Miscellaneous** hyperlink on the Bankruptcy Events menu
- Enter case number (e.g., 08-10101)
- Scroll down to "Document" in the window; select "Document" from the event pick list by highlighting it
- Click on **Next** to continue
- Select *debtor names(s)* as the party
- Upload correct petition pdf file and the signature page **as an attachment**. (**THIS IS VERY IMPORTANT**: VIEW THE FILES FIRST IN THE BROWSE WINDOW. **IF YOU ARE NOT LOOKING**

**AT THE CORRECT PETITION PDF FILE, DO NOT UPLOAD IT.**

For help, see the instructions for viewing the pdf file before uploading it at the end of these procedures. You may start over by clicking on any of the hyperlinks in the blue CM-ECF menu bar at the top of the screen.)

- At the prompt: *What are the details of the document?* type in one of the following:
  - a. Voluntary Petition with Schedules and Statements for Debtor (*enter name of debtors*).

OR

- b. Voluntary Petition without Schedules and Statements for Debtor (*enter name of debtors*).
- Review the docket text and, if correct,
  - click on **NEXT** to submit the correct petition.
  - If not correct, click on any of the hyperlinks in the blue CM-ECF menu bar at the top of the screen, and start over.

**Step 2** If you have not already done so, upload creditors immediately and run the judge/trustee assignment module. This is necessary for CM-ECF to assign a judge to the case.

**Step 3** Prepare a motion to strike the wrong document filed as the petition and substitute the correct petition. Draft your motion tracking the sample order (attached at the end of this procedure).<sup>1</sup> If you have refiled the petition in this case, reference the document number of the refiled petition docket entry in your motion asking the Court to substitute that petition for document #1.

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<sup>1</sup>See sample order on the Court's website under Forms - Attorney Forms - *Order Granting Motion to Strike Wrong Documents Filed As Petition and Substitute Debtor's Petition for Document #1* in Corel WordPerfect and MS Word format. Go to <http://www.nmcourt.fed.us/usbc/forms-attorney>.

**Step 4** File the motion to strike as follows:

- Click on the **Bankruptcy** hyperlink in the blue CM-ECF menu bar.
- Click on the **Motions/Applications** hyperlink
- Enter case number
- Select "Strike (motion)" from the event pick list
  - Select debtor(s) as the party
  - Upload correct pdf file containing your motion. (**THIS IS VERY IMPORTANT: VIEW THE FILE FIRST IN THE BROWSE WINDOW. IF YOU ARE NOT LOOKING AT THE CORRECT MOTION PDF FILE, DO NOT UPLOAD IT.** For help, see the instructions for viewing the pdf file before uploading it at the end of these procedures. You may start over by clicking on any of the hyperlinks in the blue CM-ECF menu bar at the top of the screen.)
  - At the prompt: *Refer to existing event(s)?* click in the box.
  - At the prompt: *Select the category to which your event relates,* select *misc.*
  - At the prompt: *Select the appropriate event(s) to which your event relates;* check the box for document #1, the voluntary petition.
  - Review final docket text; if okay, click on **NEXT**. If not okay, start over by clicking on any of the hyperlinks in the blue CM-ECF menu bar at the top of the screen.

**Step 5** Submit a proposed order to the judge via e-mail. For instructions to do this, see <http://www.nmcourt.fed.us/usbc/proposed-orders>.

**Step 6** After filing the petition (if necessary) and the motion, continue filing the case initiating documents in the case. Please note: **any documents originally filed as document #1 when you opened the case will need to be refiled separately at this point.** For example, if the document you filed as document #1 was a document you would normally file separately, like a Statement of Intention, refile the Statement of Intention (see the

appropriate case filing flowchart on the Court's website). If, however, the document you filed as document #1 is completely unrelated to this bankruptcy case, do not refile the document.

**Instructions for Viewing the Pdf File Before Uploading it.** The **Select the PDF document** screen displays for you to upload the petition PDF file. Here's where you tell CM-ECF the file name of the PDF file and its location on your computer. If you know the file path and name, you can type it in the **Filename** box. If you don't know it, you can browse your computer directories for the file as follows:

1. Click on the **Browse** button
2. The **File Upload** (or similar) screen opens. Navigate to the directory where the petition PDF file is located.
3. To verify that this is the correct petition PDF file, do the following:
  - a. Right click on the file name. A drop-down menu displays.
  - b. Left click on **open** (or Open with Acrobat.....) in the drop-down menu to open the PDF file Adobe Acrobat.
  - c. After viewing the document, click the **X** in the upper-right corner of the Adobe Acrobat screen to exit and close Adobe Acrobat.
  - d. If the PDF file you viewed is not the correct document, find the correct PDF file before continuing. If you cannot find the correct PDF file, start over by clicking on any of the hyperlinks in the blue CM-ECF menu bar at the top of the screen.
  - e. If the PDF file is the document you want, double-left-click the PDF file in the **File Upload** screen to select it.

**PLEASE NOTE:** Once you submit a document for filing in CM-ECF, the document is officially filed and entered on the docket. You will want to make sure the PDF file you upload for transmission to the Court's CM-ECF database contains the correct document. If you need help, call the Clerk's Office at 505-348-2500 and ask for a CM-ECF trainer.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO

In re:

Debtor.

Case No.

**ORDER GRANTING  
MOTION TO STRIKE WRONG DOCUMENTS FILED  
AS PETITION AND SUBSTITUTE DEBTOR'S PETITION FOR DOCUMENT #1**

THIS MATTER is before the Court on the Motion to Strike Wrong Document(s) Filed as Petition and Substitute Debtor's Petition for Document #1 ("Motion"), filed by Debtor's attorney, on *(date)*. The Motion seeks to substitute Debtor's voluntary petition for the incorrect document(s) filed in error to initiate this case. Upon review of the Motion and the record of this proceeding, the Court FINDS:

1. On *(case opening date)*, Debtor's attorney opened a bankruptcy under Chapter (7, 13, etc.) of the Bankruptcy Code in CM-ECF, the Court's electronic filing system.

2. The *(specifically identify documents, e.g., petition with exhibit D, schedules, statement of financial affairs, and statement of monthly income (B22A) and signature page in the name of John Doe or exhibit D with credit counseling certificate)* electronically filed on *(case opening date)* as Document # 1 were uploaded into CM-ECF in error.

WHEREFORE, IT IS HEREBY ORDERED that the documents filed on *(case opening date)* as Document # 1 are stricken.

IT IS FURTHER ORDERED that the petition *(with exhibit D, statements and schedules, if applicable)* and signature page filed on *(date)* as document (#) are deemed to be the correct petition *(with exhibit D, statements and schedules, if applicable)* and signature page for this case and are hereby substituted for the documents filed in error. The Bankruptcy Court Clerk is directed to modify the docket entry for document (#) to indicate that it is the petition substituted for document #1.

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[NAME OF JUDGE]

United States Bankruptcy Judge

Submitted electronically by:  
*(name of debtor's attorney)*

Copies to:  
*(name of case trustee)*  
*(name of U. S. trustee)*