

AMERICAN BAR ASSOCIATION**ADOPTED BY THE HOUSE OF DELEGATES****February 13, 2006****Recommendation**

RESOLVED, that the American Bar Association recommends that the United States Bankruptcy Courts in each federal district permit attorneys who have received electronic case filing (ECF) training in any district to file documents electronically in bankruptcy cases in any other district, provided that the attorney satisfies any and all other requirements for the filing of documents in bankruptcy cases in that district.

REPORT

LOCAL RULES FOR ELECTRONIC CASE FILING IN THE BANKRUPTCY COURTS

I. INTRODUCTION AND SCOPE OF PROJECT

A Working Group on Local Rules for Electronic Case Filing in the Bankruptcy Courts was appointed in the Spring of 2005 to the Ad Hoc Committee on Bankruptcy Court Structure of the American Bar Association Business Law Section.¹ The Working Group's mission is to propose a model local rule regarding an attorney's ability to file documents² in bankruptcy courts using that court's electronic case filing (ECF) system. The purpose of this model rule will be to remove barriers to electronic filing and thus to treat paper filing and electronic filing equally. It is not our intention to change any existing local counsel or *pro hac vice* rules; rather, our goal is to enable a lawyer who can file a paper document in a bankruptcy court to file a document in the same court electronically.

Our proposed rule, which is set forth at the end of this Report, would allow attorneys who have received ECF training in any district to file documents electronically in bankruptcy cases in any other district, *provided that* they satisfy all of the other requirements for filing documents in bankruptcy cases in that district.

II. THE PROBLEM

Today, 87 bankruptcy courts have electronic case filing systems and 53 *require* that all documents filed in all cases be filed electronically.³ Many of the courts with ECF systems require that attorneys attend ECF training in the applicable district before receiving the password that will enable them to submit documents electronically. This requirement that an attorney attend local training places additional barriers in the way of a lawyer's ability to practice law because an attorney admitted to practice before three different courts might not be permitted to use the ECF system in those courts unless she attends local training.

Of the 87 bankruptcy courts that have ECF systems, 73 require that an attorney receive local training before receiving an ECF password. Of those courts, 23 do not waive this requirement in any circumstances and 50 waive the requirement if the attorney is also filing electronically in

¹ The Working Group members are Mitchell Seider, Chair, Juliet Moringiello, Reporter, Warren Agin, Larry Feinstein, Christina Houston, Christopher Kaup, Hon. Cecelia Morris, and William Schorling, Chair of the Ad Hoc Committee on Bankruptcy Court Structure. We would like to thank Jessica Mercy, Widener University School of Law Class of 2007, for all of her help in collecting the information necessary to compile this report.

² Although "record" is the term commonly used to refer to both paper and electronic documents, *see, e.g.*, Electronic Signatures in National and Global Commerce Act, 11 U.S.C.A. § 7001 *et. seq.*; UNIFORM COMMERCIAL CODE § 9-102(69), we use the term "document" to conform with Fed. R. Bankr. P. 5005(2), which, in authorizing courts to permit electronic filing, refers to electronic documents as "documents"

³ We include available information from bankruptcy courts in the 50 states and the District of Columbia. This information is available on the web sites of the individual bankruptcy courts. *See, e.g.*, United States Bankruptcy Court for the Eastern District of New York, <http://www.nyeb.uscourts.gov>.

another district. Six courts require no training at all.⁴ The waiver conditions vary. One court will waive local training if the filer is located in a geographical area in which training is not easily accessible.⁵ Two will waive local training for attorneys who have successfully used ECF in any bankruptcy court within the preceding six months.⁶ Other courts will waive the local training if the attorney is currently using the ECF system in the bankruptcy court in another District in the same state.⁷ A small number of courts waive the local training requirement if the lawyer successfully completes an online training tutorial.⁸ Most of these courts require that lawyers be admitted to practice before the court in question as a prerequisite to obtaining an ECF password.⁹

These requirements often make the electronic filing requirements more onerous than the paper filing requirements because lawyers can file some paper documents (for instance proofs of claim) in bankruptcy courts without being admitted to practice before those courts. The onerous nature of these requirements seems to conflict with the very purpose of electronic case filing: to allow a lawyer to file documents in a court from her office computer.

This problem is particularly acute in bankruptcy practice for several reasons. Bankruptcy cases involve a large number of parties and a large number of proceedings. Because many debtors, particularly business debtors, have creditors located in several jurisdictions, lawyers in jurisdictions other than that in which a bankruptcy case is pending are routinely involved in bankruptcy cases. While ECF can, in theory, reduce the costs involved in bankruptcy litigation, the requirement that all attorneys wishing to use the ECF system receive local training can increase such costs because a non-local lawyer will be required to either hire local counsel or obtain *pro hac vice* admission to the court in order to receive such training (in districts that allow passwords to be issued only to lawyers admitted to practice before the court in question).

As noted in the Introduction to this Report, we do not intend to change any rules regarding admission to practice before any court. Accordingly, we wish to make it clear that obtaining a password is not equivalent to *pro hac vice* admission and that the use of a password to file anything that requires admission will subject the filing attorney to discipline if that attorney is not properly admitted.

Respectfully submitted by,

Dwight L. Smith, Chair
General Practice, Solo and Small Firm Division

February 2006

⁴ District of Arizona, Central District of California, District of Connecticut, District of Delaware, Middle District of Georgia, Middle District of Tennessee.

⁵ Eastern District of California. To be eligible for the waiver, the attorney must have been trained to use the ECF system in another bankruptcy court. <http://www.caeb.uscourts.gov/data/formpubs/EDC.002-305.pdf>

⁶ Northern District of California, District of Idaho.

⁷ Western District of Louisiana, Eastern District of Washington.

⁸ The U.S. Bankruptcy Courts in the following districts do this: Southern District of New York, Northern District of Ohio, and Western District of Tennessee.

⁹ Courts with this requirement include attorneys admitted *pro hac vice*.

III. THE PROPOSED RULE

ATTORNEY PASSWORDS

To file documents in bankruptcy cases using the electronic case filing (ECF) system, an attorney shall obtain a password from this court. To obtain a password, an attorney shall submit an application to the court in the form set forth in this Rule.

PERSONS ELIGIBLE TO OBTAIN ECF PASSWORDS

The following persons are eligible to receive an ECF password from this court:

- 1) All attorneys who have completed a Bankruptcy Court-sponsored ECF training class in this District;
- 2) All attorneys who have completed an ECF training class sponsored by any other United States Bankruptcy Court.
- 3) For the purposes of this Rule, an “attorney” is any individual admitted to practice law before any federal court in the United States.

United States Bankruptcy Court

_____ District of _____

**ELECTRONIC CASE FILING
FILER REGISTRATION FORM
WITH APPLICATION FOR PASSWORD
WAIVER OF NOTICE AND SERVICE BY MAIL AND
CONSENT TO ELECTRONIC NOTICE AND SERVICE**

Name: _____
Last First Middle

ATTORNEY BAR ID NUMBER(S)
AND STATE(S) OF LICENSING: _____

FIRM NAME (if any): _____

MAILING ADDRESS: _____

VOICE PHONE: _____ FAX PHONE: _____

E-MAIL ADDRESS
FOR ALL ECF PURPOSES: _____

I declare, under penalty of perjury:

1. I am admitted to practice law before **[name of United States federal court]**.
2. I will immediately notify the bankruptcy court of any change in the information on this registration form.
3. I will take all reasonable steps to protect the confidentiality of the password obtained by this registration.
4. I agree that use of my password to file a document in the bankruptcy court ECF system constitutes my signature on that document for all purposes. I understand that use of my password to file any document (except a list, schedule, statement or amendment thereto) constitutes my signature for purposes of Bankruptcy Rule 9011.

5. Upon receipt of a password, I waive the right to receive notice or service by any of the conventional delivery means described in Bankruptcy Rules 2002, 7004 or 7005. I agree to accept a notice of electronic filing by hand, facsimile, first class mail or authorized e-mail in lieu of conventional service and I will endeavor to use the automatic e-mail notification feature of the ECF system whenever feasible.
6. I agree to read and follow the Administrative Procedures for Electronic Case Filing promulgated by the United States Bankruptcy Court for the _____ District of _____.
7. I will be responsible for the prompt payment of all filing fees for any document I file using ECF.
8. I have been trained in the use of ECF by the Clerk of Bankruptcy Court for the _____ District of _____ or I represent the court that I have completed the ECF training class sponsored by the United States Bankruptcy Court for the _____ District of _____. (If you are a filing user in another bankruptcy court's ECF system, please provide a screen shot of your "Maintain Your ECF Account" screen from that court's system as verification of your completion of that court's ECF training).

Signature of Applicant

Date

Please return this form to: **[insert name and address of court]**

Your password will be e-mailed to the e-mail address supplied above as a test of the ECF e-mail notification system.

GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations
(Please refer to instructions for completing this form.)

Submitting Entity: General Practice, Solo and Small Firm Division
Section of Business Law
Bar Association of the District of Columbia

Submitted By: Dwight L. Smith, Chair, General Practice, Solo and Small Firm Division
Alvin Thompson, Chair, Section of Business Law

1. Summary of Recommendation(s).
The General Practice, Solo and Small Firm Division and the Section of Business Law recommend to the House of Delegates that it pass a resolution approving the proposed Rule regarding an attorney's ability to file documents electronically in bankruptcy courts.
2. Approval by Submitting Entity.
The Executive Committee of the General Practice, Solo and Small Firm Division approved of the report on January 23, 2006. The Section of Business Law approved of the report at the Council Meeting on January 15, 2006 in Phoenix, AZ
3. Has this or a similar recommendation been submitted to the House or Board previously?
No.
4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?
None.
5. What urgency exists which requires action at this meeting of the House?
6.
On October 17, 2005, the nation's new Bankruptcy Code went into effect. In order to implement the new law, the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States has been working on the various Rules necessary to implement the many new provisions of the Code. In response, the ABA Working Group on Local Rules for Electronic Case Filing in the Bankruptcy Courts, in which both our entities participate, have been working on the attached draft Rule on ECF. Since the FJC Rules Committee will finish up its recommendations in March, it is urgent that the HOD approve the proposed Rule on ECF in February. Once the Rules are promulgated and put into effect, adding in additional or revised Rules will not be considered until Spring of 2008, when the next round of amendments to the Bankruptcy Rules will be visited.
6. Status of Legislation. (If applicable.)
Not applicable

7. Cost to the Association. (Both direct and indirect costs.)
None.
8. Disclosure of Interest. (If applicable.)
None.
9. Referrals.
The recommendation and report has been mailed to the Chairs and Staff Liaisons of each ABA Section, Division, Task Force, Standing Committee and Commission. 10.
Contact Person. (Prior to the meeting.)
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11. Contact Person. (Who will present the report to the House.)
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