

THIRD MEETING WITH
ATTORNEY ADVISORY COUNCIL
JUNE 21, 2002 1:30 P.M. TO 3:30 P.M.

MINUTES

Attendees:

Attorney Advisory Council Members:

Karen Miller Spain, Merrell & Miller	Janice Valdez Stone, Leyton & Gershman, P.C.	Peter Lumaghi Office of the U.S. Trustee
Fredrich J. Cruse The Cruse Law Firm	John LaBarge, Jr. Chapter 13 Trustee	Bill Guelker Office of Chapter 13 Trustee
T.J. Mullin Law Office of T.J. Mullin	Steven Goldstein Goldstein & Pressman, P.C.	Wendell Sherk Sherk & Swope, LLC
Michael McClafin Thompson Coburn LLP	Amy Tucker Thomas Noonan's Office	

Court Attorney Advisory Committee: Judge Barry Schermer, Diana Durkee-August, Roe Blankinship, Wynne Abernathy, Bill Wolfenbarger, Susan Spraul and Sandy Louis

I. Comments on Minutes of Last Meeting

- A. The Attorney Advisory Council recommended the May 31, 2002 Meeting Minutes be amended by changing Page 3, second paragraph regarding deadline for filing the declaration [if any] with the Court to read: "Further discussion led to the conclusion that the declaration should be filed with the Court within eight (8) days of the electronic filing." Based on Rule 9006, the eight days are measured as eight calendar days, rather than business days.
- B. Because a login and password are deemed to be the signature of the filer, the Attorney Advisory Council suggested the "/s/" on the document is not necessary and the Court should accept all types of signature blocks on electronically filed documents. If a declaration will be required, it was agreed that clients will need to sign the declaration.

II. New Items - Current Agenda

A. Use of Declaration Form and Content of Form if Use is Recommended

Discussion of the use of a declaration form was continued from the May 31, 2002, meeting with the initial observation that while a declaration form provides proof the client authorized a bankruptcy petition filing, the form does not protect the attorney or prove the client authorized the content of any given document. To protect against claims from clients that a filing was unauthorized, the Council agreed attorneys would need to keep signed copies of all filed documents in the attorney's files. Consequently, the Council concluded use of a declaration form is not needed and retention of documents is the real issue.

Further, the U.S. Attorney's Office does not believe use of a declaration form would eliminate the need to separately confirm the debtor authorized the content of a petition or schedules since the form could not be linked to the documents actually filed. The U.S. Trustee's Office reported the U.S. Attorney reviews the tapes from the 341 Meeting to link the debtor to the petition and would probably need to do so in the future.

The Council also agreed provisions in a declaration form authorizing the attorney to release original documents from client files was not reason to mandate use of a declaration form. Attorneys could obtain client releases as means of office management and ECF administrative procedures could order the attorney to turn over any original documents on request.

In response to an inquiry from the Attorney Advisory Council, the Court reported fraud activity incidental to implementation of CM/ECF has been insignificant. California reported no occurrences of fraud and one court in New York reported one incident of fraud in connection with CM/ECF. In light of few incidences of unauthorized filings, the Council further concluded a declaration form is not necessary to protect against abuse.

B. Other Signature Issues

Council discussed how documents requiring multiple signatures are handled. Process used in other courts is for the person filing the document bearing multiple signatures to retain the original document. Rules usually state the submission of a multi-party document is a representation by the filer that he has consent of all those whose signatures are referenced.

C. Projected Live Date

The Court reported that the date for ECF usage is dependant on release of new software.

The projected release date is currently late summer or early fall, 2002. It is doubtful the system will be in use for the public prior to 2003.

C. Registration and Passwords

The Council discussed the registration process whereby login and passwords are generally issued after attorneys successfully complete training and submit an application for ECF registration. Only attorneys (or possibly creditors for proof of claim filing purposes) will likely be issued logins and passwords. Some Council members questioned whether attorneys must attend the training to register or whether office staff who will use the system may attend in place of the attorney. Generally, the attorney must attend training unless the Court establishes a proficiency test so that those with demonstrated knowledge of the system will not need to attend training. Because the login and password are the equivalent of the attorney's signature, attorneys are responsible for their use even if they plan to allow office staff to do the filing.

Attorneys requested the ability to change or cancel their passwords. The Court explained that passwords cannot be changed remotely by the user. Rather, on request, Court staff can promptly terminate a login and password and assign a new one to accommodate changes.

Attorneys also requested multiple access under a single registration so that an attorney can have one login and several passwords for use by different staff members. The Court explained ECF will permit an attorney to be issued multiple logins and passwords, i.e. Fred Cruse could have "Cruse1" and a password; "Cruse2" and a password, etc. Attorneys also inquired about the ability to select their own login and password so that they might use a common password or the same one they are already using in the Western District of Missouri or Southern Illinois. Assuming the Court can accommodate the requests, the ECF system will permit the Court to issue custom passwords. Bill Wolfenbarger advised that the system requires eight characters for passwords.

The issue of whether inactivity will cause termination of the login was raised with the recommendation that inactivity not cause termination of access privileges.

D. Hard Copies of Schedules and Statements of Financial Affairs

It was agreed that the debtor's attorney provide a hard copy of the schedules and statement of financial affairs to the trustee prior to the 341 Meeting of Creditors. Specifics of how and when such documents are to be delivered were not resolved.

Some attorney members opposed having to provide hard copies to the trustee, but the Council agreed as an interim step, the trustees will continue to need hard copies to prepare for the 341 meeting because they cannot prepare efficiently using only the

electronic document. The cost to the trustees of printing all petitions and schedules to prepare for a 341 meeting was also a factor because of the fixed fee paid to trustees for Chapter 7 cases. Some bankruptcy courts are developing a program which will transmit data from electronic case files to the trustees directly to assist trustees in reviewing case files. Eventually, such a program may eliminate the need to provide copies to the trustees.

The Council discussed whether debtor's attorneys would mail copies of the petition and schedules to the trustee or, in Chapter 11 Cases, to the U.S. Trustee, or whether they would deliver all copies to the Court for the Court to send to the trustee. No resolution was reached because of uncertainty in knowing how the trustee assignment process will work under ECF. If the filer will know at the time of electronically filing a petition which trustee will be assigned to a case, the attorney could easily mail a copy to the trustee at the same time they send a copy to their clients. If the trustee is assigned and noticed later, however, the burden on debtor's counsel to subsequently mail the petition and schedules increases along with the risk that the trustee will not receive copies or will receive them sporadically.

E. Retention Of Original Documents

The Council discussed that all ECF courts require the filer to retain original signed documents for a period of time and require the filer to produce those copies on request. The period of time is often linked to the statute of limitations for fraud. The Council discussed who should retain the originals and for how long. Some felt the trustees should retain the originals, and all felt a period of five years was too long. It was suggested that originals be retained by the individual who filed the document for two years after a case is closed.

Question arose about who is the "filer" of an electronic document. Is the "filer" the attorney whose login and password are used to transmit the document or the attorney whose name may be listed on the pleading? The distinction is relevant to Exhibit A on the petition concerning attorney's statement that attorney advised debtor of bankruptcy options under other chapters. It is also relevant to office management. Some firms may want all pleadings filed under one lead counsel's name. Council observed that this issue is very similar to attorney control of his signature now, i.e. some attorneys delegate authority to prepare pleadings and yet the attorney whose signature appears is the "filer." Similarly, under ECF, the login and password would likely define who is the filer regardless of who prepared the document or whose written name may appear on the document. It would be best if the names were consistent, however. Council members from law firms using the system in other jurisdictions reported attorneys were managing their logins with staff and had no problems with this issue.

Council also questioned whether use of credit card was linked to attorney's login and password. Credit card usage is not linked to ECF registration. Any attorney authorized

on a credit card registration form to use the card may do so when filing under his or her own ECF login and password.

F. Next Meeting

The Council suggested it explore at the next meeting how Pro Hac Vice users will file in this District. Additional matters to be covered will be general filing procedures and electronic notice.

The next meeting is scheduled for **Friday, July 12, 2002, at 1:30 p.m. on the 28th floor.**