

FIFTH MEETING WITH  
ATTORNEY ADVISORY COUNCIL  
August 9, 2002 - 1:30 P.M. TO 3:30 P.M.

**Attendees:**

**Attorney Advisory Council Members:**

Fredrich J. Cruse  
The Cruse Law Firm

David Warfield  
Husch & Eppenberger

Steven Goldstein  
Goldstein & Pressman, P.C.

Susan Reiss  
Bryan Cave, LLP

Leonora Long  
Office of the U.S. Trustee

Janice Valdez  
Stone, Leyton, Gershman, PC

Wendell Sherk  
Sherk & Swope, LLC

Amy Tucker  
Thomas Noonan

T.J. Mullin  
Attorney at Law

John V. LaBarge  
Chapter 13 Trustee

Bill Guelker  
Office of Chapter 13 Trustee

**Court Members:** Dana C. McWay

**Court Attorney Advisory Committee:** Bill Wolfenbarger, Diana Durkee-August, Wynne Abernathy, Susan Spraul, Chris Keefe, Sandy Louis and Roe Blankinship, Dana McWay and Judge Barry S. Schermer.

**I. Comments on Minutes of Last Meeting**

There were no corrections to the minutes from the last meeting, but a question for clarification was asked whether reference to word processing format for proposed orders meant that orders could be tendered in Word or WordPerfect format. The Court explained it can accept any word processing format if the Court elects to have proposed orders submitted in a word processed, as opposed to a PDF format. The Court explained decisions on the process for submission of proposed orders has not been finalized by the Court and that topic will be discussed later as part of the Council's meeting.

**A. CM/ECF Brochure and CM/ECF Training Survey**

The Court distributed its CM/ECF brochure and Training Survey with explanation that the survey has been mailed to all attorneys in the Eastern Division. The Council shared observations that certain attorneys are asking already whether ECF will be mandatory this Fall. The Court asked the Council to keep us apprised of such public sentiments so that we might be able to respond appropriately.

## **B. Additional Introductory Comments**

The Court explained that the software is scheduled for delivery September 3, 2002. The Court reiterated that any timeline for ECF implementation is dependent on release of the software and explained that the date for software release has been extended on various occasions.

Two additional preliminary points were raised by the Council. The first is a question regarding bulk filers and whether the Court knows if the system can accommodate issuance of case numbers and 341 Meeting assignments in a sequential format. The response continues to be that the software does not have the capability of reserving a series of case numbers for a particular filer, but that the Court is aware this feature is desired by counsel. The second point raised was a question whether ECF will be mandatory on all cases as of a certain date or only all new cases filed after that certain date. In the first scenario, ECF would apply to any pleadings filed after the effective date of ECF. In the second scenario, ECF would apply only to pleadings in cases commences after the ECF effective date. If ECF will apply to all cases, not just new cases, the question then becomes whether the Court will attempt to image all pleadings in those cases or only have available images of pleadings filed after the effective date.

The Council did not have a strong preference with respect to the scope of ECF implementation, but said it is most helpful to have a single bright line – that is, a single date -- after which all matters are required to be electronically filed.

## **II. Meeting Agenda - Using the System**

### **A. Notice of Documents and Management of Electronic Notices**

The Advisory Council commented that one of the most substantial frustrations with electronic case filing from the practitioner's perspective is the abundance of e-mail notices received. One very clear recommendation is to see if the system can omit sending notices of proofs of claims to all parties and to ensure that notices in adversary proceedings only are sent to parties to the adversary proceeding. The Court indicated that it believes notices in adversary proceedings are sent exclusively to parties to that adversary.

The Council asked whether creditors are able to get e-mail notification of pleadings filed in a case. The answer is perhaps. First, creditors may be added as an additional e-mail address to an attorney's registration so that an attorney may list a client's e-mail address and have notice go to the client directly from the Court. Additionally, the Court is contemplating limited ECF usage for various creditors.

The Council commented that it is certainly more cost effective to send electronic notices than to send paper copies. The Council indicated other jurisdictions were having problems when attorneys who should be using the electronic case filing system have indicated that will not accept or do not want electronic notice. In those instances, counsel are required to send paper documents to the party when service is required. The Court explained that generally one's registration for ECF usage includes a signed consent that upon registering, the attorney will

accept electronic notice. The Council also recommended that when attorneys are admitted pro hac vice, the application for admission should require the attorney to receive electronic notice and should provide local counsel would be required to electronic notice as well.

### **Certificates of Service**

The Council discussed a format and manner in which attorneys are presently filing certificates of service in other courts using ECF. The consensus is that a certificate of service is filed as part of the underlying pleading, but some attorneys list names of all parties who receive the document both by mail and electronically, while others only list the names of those parties to whom mail service has been given. A question arose whether the ECF system retains a reviewable list of the electronic notification form indicating to whom electronic notice has been sent. The Court was asked to look into this aspect and has subsequently confirmed that the ECF system does retain an electronic copy of the electronic notice issued whenever a pleading is filed. Thus, by looking at the electronic notice, the Court can identify to whom notice was sent electronically without having to look at the attorney's certificate of service.

### **B. Exhibits\Attachments**

Fred Cruse distributed a memo dated July 23, 2002, copy attached, analyzing the size difference in PDF formatted documents depending on the manner in which the document is created. Mr. Cruse summarized his investigation by stating that attorneys need to be cautious on how they convert documents to PDF format in order to minimize document size. The larger a document is, the longer the time for transmission and download. A document that is too large may cause the system to "time out" or interrupt a download. Second, Mr. Cruse indicated that based on the size of many exhibits, he felt the usage of exhibit lists in lieu of filing exhibits is an efficient way to proceed.

Mr. Cruse also indicated that the software for PDF conversion that he found most helpful is a product called "Read Iris."

Further discussion regarding use of exhibits indicated that in Chapter 11 cases, the single largest advantage to ECF is complete access to all documents, including exhibits. Thus, in Chapter 11 cases, the Council emphasized relevant information for analysis is often contained within exhibits, so some members on the Advisory Council urged the Court to permit the filing of exhibits.

Considering exhibits to proofs of claim, the Council observed that trustees will need to look at attachments in order to evaluate proofs of claim.

It was further observed that some jurisdictions limit the size in kilobytes (Kb) of a document that is filed so that if exhibits are to be filed, their size may be limited.

**It was suggested that the Court form a subcommittee of the ECF Attorney Advisory Council to provide recommendations on the format for exhibits after investigation of the**

**Court's system's functionality features and limitations.** David Warfield, Steve Goldstein, Susan Spraul and Bill Wolfenbarger were nominated to participate in the exhibits subcommittee.

### **III. Information Gathering/Brainstorming Session**

#### **A. Court Proceedings and Orders**

The Council discussed that some courts issue minute entries rather than orders, and the Council discussed whether a minute entry was sufficient for enforcement purposes with third parties such as title companies and sheriff's offices. The recommendation is that the Court should require and issue separate orders rather than simply generating minutes entries. The Council was not particularly concerned, however, whether the Judge's signature appeared on those orders or whether the orders contained a \s\ designation.

#### **Submission of Proposed Orders**

The Court is still analyzing various processes for submitting proposed orders. Some courts require orders to be submitted as an attachment to an e-mail. One court has developed a program that is compatible with ECF in which the order is filed simultaneously with the underlying document and an attached file is provided in word processing format rather than PDF format. This document and entry do not, however, appear on the docket until the Court is ready to issue the order.

The Council discussed whether the ECF system should have a drop-down menu with standard proposed orders that the filer could submit. The Council discussed that standard orders are often used, but are usually those tendered by the Chapter 13 trustee or orders that the Court itself issues and generates.

#### **Scheduling Hearings**

The Court discussed that the process for scheduling hearings will remain substantially the same in the ECF system as it is now. Counsel will be required to contact the courtroom deputy and set hearings as required on available dates.

#### **B. Specific Interest Issues**

The Council discussed the need in large Chapter 11 cases which are jointly administered to have pleadings filed in the lead case and develop an approach so that documents need not be transmitted to each case, but only filed in the lead case. The Council also discussed whether the ECF system could provide a hyperlink from any related case to the main case where the actual case data and documents would be found.

#### **Bankruptcy Petition Preparers**

The Court indicated it presently does not contemplate providing ECF access to non-attorneys, that is, bankruptcy petition preparers, so that they could file electronically.

**Conclusion**

The meeting concluded with a summary that the Court will contact those who agreed to assist with the subcommittee on exhibits. The Court will also be establishing its trustee subcommittee to identify various issues of relevance to case trustees, including matters such as batch filing.

The Court explained that the Advisory Council will be asked to comment on the court's training process and invited e-mail communication from Council members regarding any aspects of ECF which the Council may hear from interaction with other attorneys. The Court reiterated that the training survey is online and invited the Council to complete the survey.

No future meeting was scheduled at this time. The brainstorming and information gathering phase of the Council is concluded until further information regarding specific applications and usage of the ECF system is available.

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