

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE:

Procedural Rules for
Electronic Case Filing (ECF)

Administrative Order No. 1

Federal Rule of Civil Procedure, (“FRCP”), 83 and Federal Rules of Bankruptcy Procedure, (“FRBP”), 5005(a)(2), 9011, and 9029 authorize this Court to establish practices and procedures for the filing, signing, and verification of pleadings and papers by electronic means; and

The “*Administrative Procedures for Filing, Signing, and Verifying Pleadings and Papers by Electronic Means*,” (“*Administrative Procedures*”), have been reviewed by this Court; and

The *Administrative Procedures* are consistent with and further the responsibility of the Clerk of Court for the control of the Court’s docket under FRBP 5003, including safeguarding the integrity of the Court’s docket; and

The *Administrative Procedures* do not impose fees inconsistent with the present fee structure adopted by the Judicial Council of the United States pursuant to 28 U.S.C. § 1930; and

The *Administrative Procedures* provide adequate procedures for filing pleadings and papers and provide access to review and retrieve records and dockets of this Court by parties who are not able to access the Electronic Case Filing System over the Internet, thereby complying with the requirements contained in 11 U.S.C. § 107(a); and

The *Administrative Procedures* do not impair the ability of the Clerk of the Court to perform statistical reporting responsibilities for both the Court and the Administrative Office of the United States Courts; and

The *Administrative Procedures* are consistent with notice requirements of the FRBP and the Local Bankruptcy Rules for Western District of New York, (“LBR”).

IT IS ORDERED that:

1. Introduction and Definitions.

- a. The Clerk of the Bankruptcy Court for the Western District of New York is authorized to implement, publish, and update the *Administrative Procedures* for the district, including but not limited to the procedures for registration of attorneys and other participants, and for the distribution of logins and passwords to permit electronic filing and notice of pleadings and other papers.
- b. In the event of a conflict between the *Western District of New York Local Bankruptcy Rules* and the *Administrative Procedures* regarding the electronic filing of petitions, pleadings and other papers, the *Administrative Procedures* shall govern.
- c. “Electronic Case Files,” as referred to in the *Administrative Procedures*, are petitions, pleading, and other papers that are stored in a fixed electronic format instead of on paper. This Court accepts documents only in the *Portable Document Format* (“PDF”) and creditor matrices in ASCII DOS Text format (“.TXT”).
- d. “Conventional Case Files”, as referred to in the *Administrative Procedures*, are petitions, pleading, and other paper that are filed with the Court in “paper format”. All filing requirements as provided in the FRBP and the LBR shall apply unless otherwise provided in the *Administrative Procedures*.
- e. “Filer”, as referred to in the *Administrative Procedures*, is defined as the attorney of record or the actual party in interest, if not represented by counsel, who transmits any pleading or document to the Court.

2. Electronic Filing of Documents.

- a. The electronic filing of a pleading or other paper in accordance with the Electronic Filing Procedures shall constitute entry of that pleading or other paper on the docket kept by the Clerk of Court pursuant to FRBP 5003.
- b. The Office of the Clerk will enter all orders, decrees, judgments, and proceedings of the court in accordance with the Electronic Filing Procedures, which shall constitute entry of the order, decree, judgment, or proceeding on the docket kept by the Clerk pursuant to FRBP 5003 and 9021.
- c. For electronic filings that require a fee to be paid, the filer will complete the payment process over the Internet using a valid credit card account with a sufficient available credit limit.

3. Logins and Passwords

- a. Each attorney admitted to practice in the Western District of New York and currently in good standing, and other authorized filers shall be entitled to a single Electronic Case Filing System login and password to permit him/her to electronically file and electronically receive pleadings and other documents.
- b. Login and password registration forms are available in the Office of the Clerk and on the Court's Internet site; www.nywb.uscourts.gov.
- c. A trustee or standing trustee who also serves as private counsel should submit two separate Attorney Registration Forms and will receive two separate logins and passwords; one for the role of trustee and one for their role of private counsel.

- d. No attorney, trustee or other authorized user will knowingly permit or cause to permit their password to be utilized by anyone other than an authorized employee of their law firm or organization.
- e. No person shall knowingly utilize or cause another person to utilize the password of a registered attorney or other authorized user unless such person is an authorized employee of said law firm or organization.
- f. Misuse of the Electronic Case Filing System login and password may result in revocation of the login and password of the attorney or party and/or the imposition of sanctions.

4. Signatures

- a. The electronic filing of a petition, pleading, motion, or other paper by an attorney or participant who is a registered user in the Electronic Case Filing System shall constitute the signature of that filer for purposes of FRBP 9011.
- b. The signature of the debtor(s) acknowledging that the debtor(s) authorized the electronic filing of the bankruptcy case and the petition, schedules and statements filed with the Court shall be accomplished by the execution of a Declaration Re: Electronic Filing at the §341 Meeting of Creditors.
- c. Any petition, pleading, affidavit or other document filed electronically shall contain an electronic signature of the filer, e.g., “/s/ name,” or a facsimile of the filer’s signature. The electronic filing of any document requiring an original signature constitutes a representation by Filing User that the original signature(s) of the parties to such document(s) were already obtained by the Filing User prior to the electronic filing. Violations of this requirement will result in disciplinary action against the Filing User.

5. Notice of Electronic Filing and Service

- a. Whenever a pleading or other paper is filed electronically, a “*Notice of Electronic Filing*” will be automatically generated by the Electronic Case Filing System at the time of the filing and sent electronically to the party filing the pleading or other paper, as well as to all parties in the case who are registered participants in the Electronic Case Filing System or have otherwise consented to electronic service.

- b. If the recipient of notice or service is a registered participant in the Electronic Case Filing System or has otherwise consented to electronic service, service of the *Notice of Electronic Filing* shall be the equivalent of service of the pleading or other paper by first class mail, postage prepaid.

- c. The filing party shall serve the pleading or other paper upon all other persons entitled to notice or service in accordance with the applicable rules, or, if service by first class mail is permitted under the rules, the filing party may make service in accordance with subparagraph “f” below.

- d. Participation in the Electronic Case Filing System by receipt of a login and password from the Court shall constitute a request for service and notice electronically pursuant to FRBP 9036. Participants in the Electronic Case Filing System, by receiving a login and password from the Court, agree that notice and service by electronic means constitutes proper service.

- e. A summons and the appropriate number of copies must be filed with the Court conventionally. Service of a summons and a complaint filed in an adversary proceeding

shall continue to be made pursuant to FRBP 7004. Service of a summons and an involuntary bankruptcy petition shall continue to be made pursuant to FRBP 1010 and 7004.

- f. Pleadings or other documents which are not filed electronically shall be served in accordance with the FRBP and the LBR except as otherwise provided by Order of the Court.
 - g. Service by electronic means is not effective if the party making service learns that the attempted service did not reach the person to be served.
6. The provisions of this Order shall apply to all electronically filed cases and proceedings and cases and proceedings converted to the Electronic Case Filing System in the U. S. Bankruptcy Court for the Western District of New York. Amendments to this Order may be entered from time to time as deemed necessary by the Court.
7. The effective date of this Administrative Order is June 16, 2003

IT IS SO ORDERED.

DATED: May 28, 2003

By the Court

/s/ John C. Ninfo, II

Honorable John C. Ninfo, II
Chief Judge, U. S. Bankruptcy Court

/s/ Michael J. Kaplan

Honorable Michael J. Kaplan
Judge, U. S. Bankruptcy Court

/s/ Carl L. Bucki

Honorable Carl L. Bucki
Judge, U. S. Bankruptcy Court