

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

ELECTRONIC MEANS FOR FILING,
SIGNING AND VERIFICATION OF
DOCUMENTS

Superseding General Order M-242

M-399

Pursuant to Federal Rules of Civil Procedure (“FRCP”) 5 and 83 and Federal Rules of Bankruptcy Procedure (“FRBP”) 5003, 5005, 7005, 9029 and 9036, the Court is authorized to establish practices and procedures for the filing, signing and verification of documents by electronic means, and to maintain the Court’s docket in an electronic format. Accordingly, the Clerk of Court is authorized to use an electronic case filing system – the Case Management/Electronic Case File (“CM/ECF”) System or any successor to that system – to maintain the Court’s docket. This General Order supersedes **General Order 242** and any subsequent general order amending General Order 242.

Additionally, the Clerk of Court is authorized to establish and maintain guidelines for all aspects of the Court’s electronic case filing system, including guidelines for the filing, signing and verification of documents by electronic means. The Clerk of Court shall present to this Court’s Board of Judges any guidelines written under this General Order. Once approved by the Board of Judges, the provisions contained within the guidelines shall have full force and effect as if they are part of this General Order. Furthermore, the Board of Judges may approve changes to the guidelines without the need to amend this General Order.

This General Order recognizes the Court’s need to keep abreast of technological changes as they occur and to comply with changes to relevant provisions of the United States Code (*e.g.*, titles 11 and 28) and to the Federal Rules of Bankruptcy Procedure. Therefore, it is anticipated that any guidelines issued pursuant to this General Order will need to be amended from time to time to account for changes in technology or the law.

To ensure that the public has access to the current guidelines, the Clerk of Court is authorized to post on the Court’s website updated guidelines as changes to the guidelines are approved by the Board of Judges; such guidelines shall be labeled as follows:

“Exhibit 1: Current Guidelines – Electronic Filing [Dated _____].”

Dated: New York, New York
May 17, 2010

/s/ Arthur J. Gonzalez
Arthur J. Gonzalez
Chief United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Exhibit 1: Current Guidelines – Electronic Filing Dated June 30, 2010

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I. REGISTRATION FOR THE ELECTRONIC FILING SYSTEM

A. Accounts.

1. Attorneys: Each attorney admitted to practice¹ in this Court shall be entitled to an account to the Court's Case Management/Electronic Case File (CM/ECF) System (referred to as "System" below) to permit the attorney to participate in the electronic retrieval and filing of documents on the System. Application guidelines are provided in paragraph B below.

2. Non-Attorneys: This Court has authorized the limited use of the System by non-attorneys who obtain a limited-access account. Application guidelines are provided in paragraph B below.

B. Application for, and Use of, Account.

1. Each applicant must submit a completed application form pursuant to the directions appearing on the Court's website [www.nysb.uscourts.gov]. Please note that separate application forms exist for attorneys and non-attorneys.

2. The Clerk's Office, upon completion of application processing, will use the e-mail address provided by the applicant to send information pertaining to the new System account.

3. Each System account holder is responsible for the accuracy of the account information pertaining to his or her account. System account holders may change their Court-assigned passwords or other account information (*e.g.*, business address) by using the Account Maintenance option from the Utilities menu once they are logged into the System. **System account holders have a duty to update promptly their account information whenever there is a change in any of the listed information** (*e.g.*, a change in the System account holder's primary and/or secondary e-mail addresses or the relocation of the System account holder's law firm to a new address).²

4. As a condition to receiving an account on the System, each applicant must agree to the terms stated in the application. Once an account is issued, each System

¹ An attorney seeking admission to practice *pro hac vice* may obtain a System account for the purpose of filing electronically the motion for admission *pro hac vice*; however, the attorney should not make any other electronic filings until either the order is signed or the attorney has received permission from chambers. Once admission is granted by Court order, the attorney may continue using the System account but *only* in the case or adversary proceeding to which admission *pro hac vice* has been granted.

² The Court is now using a second server for certain large chapter 11 cases; as of this writing, both the **Chrysler** [Old Carco LLC (f/k/a Chrysler LLC)] and **General Motors** [Motors Liquidation Company, f.k.a. General Motors Corporation] cases are currently located on this second server. To ensure that the Court has the most accurate information, **System account holders must maintain their account information in both the main server and the second server** (even if they are not participating in the cases stored on the second server). Updating the account information in one server will not automatically update the information contained in the other server.

account holder must agree to protect and maintain the accuracy and confidentiality of account information (*e.g.*, System account holder's password) and to stay current in terms of the hardware and software requirements established by the Court for System use. Furthermore, the System account holder, and any employees under the direction of the account holder, must undergo training on the System if requested by staff of the Clerk's Office to do so.

5. The Clerk's Office is authorized to maintain a procedure for the issuance of a new password to a System account holder who has forgotten his or her password.

6. The Clerk of Court retains the discretion to cancel the password of a System account holder with respect to: a) any individual who misuses the System or does not comply with the General Order and the provisions contained in these Guidelines, b) an attorney who has been disbarred or has been suspended from practicing law, or c) an attorney who has been admitted *pro hac vice* and whose representation is completed.

II. ELECTRONIC FILING AND SERVICE OF DOCUMENTS

A. Filing.

1. With limited exceptions due to privacy or other concerns, all motions, pleadings or other documents required to be filed with the Court in connection with a case shall be electronically filed on the System.

2. Except as provided in the next paragraph, all documents that form part of the motion or pleading and which are being filed at the same time and by the same party may be electronically filed together under one document number (*e.g.*, the motion and a supporting affidavit), with the exception of a memorandum of law. A memorandum of law must be filed separately and linked to the document (*e.g.*, motion) to which the memorandum pertains. All pleadings and memoranda of law must be filed in text-searchable portable document format (PDF), but exhibits may be scanned in accordance with the following paragraph.

3. Exhibits. All exhibits should be properly and separately identified when filed (*e.g.*, "Exhibit A – Mortgage Agreement"). Persons filing documents that reference *lengthy* exhibits not prepared in electronically produced text shall scan and electronically file only excerpts of the exhibits that are directly germane to the matter under consideration by the Court. Such exhibits must be clearly and prominently identified as excerpts, and the complete exhibit must be made available forthwith to counsel and the Court on request (and must be available in the Courtroom at any hearing pertaining to the matter). Persons filing excerpts of the exhibits pursuant to these Guidelines do so without prejudice to their right to file additional excerpts or the complete exhibit with the Court at any time. Opposing parties may file additional excerpts if they believe that they are germane.

4. Title of Docket Entries. The System account holder electronically filing a document is responsible for designating a title for the document (*e.g.*, motion, application, etc.) and ensuring the proper use of System events³ through the use of the System's search feature. The System account holder must review and become familiar with the System events in order to select the proper event for docketing.

5. Fees Payable to the Clerk. All filing fees incurred by the filing of documents shall be paid on-line. It is the System account holder's responsibility to have the means to pay on-line. With limited exceptions, ***filing fees are due at the time of filing.***

6. Proposed Orders. A person presenting a proposed order shall provide the presiding judge with the proposed order in word processing format – such as WordPerfect or Microsoft Word – and ***not*** portable document format (PDF). The presiding judge shall also be provided with a hard copy of the order and all related documents unless instructed by the judge's chambers to do otherwise.

7. Creditors' Matrix. A System account holder filing a case electronically must upload the creditors' matrix on the System and file the list of creditors (PDF) on the case docket. Both the matrix and the list shall include all parties listed – or to be listed – on Schedules D, E, F, G and H.⁴

B. Service.

1. Consent to Electronic Service: Whenever service is required to be made on a person who has requested, or is deemed to have requested, electronic notice in accordance with Federal Rule of Bankruptcy Procedure 9036 or the annexed order, the service may be made by serving the "Notice of Electronic Filing" generated by the System by e-mail, facsimile or hand delivery in the first instance, or by overnight mail if service by e-mail, facsimile or hand delivery is impracticable. The Court's issuance of an account to a System user constitutes a waiver of conventional service with respect to that user, who agrees to accept service in the manner described in the previous sentence. The automatic e-mailing of the "Notice of Filing" generated by the System does not constitute service.

2. Notwithstanding the preceding subparagraph, conventional service of documents in hard copy shall be required in the following circumstances:

a) Service of a complaint and summons in an adversary proceeding under Federal Rule of Bankruptcy Procedure 7004, service of a motion commencing a contested

³ An "event" is a descriptive subject heading that, when properly selected by the System account holder, corresponds to the type of document being filed (*e.g.*, a System account holder would select the event, "*Certificate of Credit Counseling*," for filing a credit counseling certificate and would select "*Motion, Relief from Stay*" for filing a motion for relief from the section 362 automatic stay).

⁴ Federal Rule of Bankruptcy Procedure 1007(a)(1).

matter under Federal Rule of Bankruptcy Procedure 9014(b), or a subpoena issued under Federal Rule of Bankruptcy Procedure 9016;

b) Notice of the meeting of creditors required under Federal Rule of Bankruptcy Procedure 2002(a)(1);

c) Where delivery or service upon an agency of the United States – including the United States Attorney and the United States Trustee – or chambers is required by any federal or local rule or order of this Court; and

d) Where the debtor or debtor’s attorney is required to serve – on the United States Trustee and the trustee assigned to the case – the petition, schedules, statement of financial affairs, other required documents and amendments to any of the afore-mentioned filings.

3. Means and Effect of Electronic Service and Notice: Whenever a document is filed, the System automatically sends notice of the filing via e-mail (“electronic notice”) to the case trustee and all System account holders who have previously filed a document in the case or have otherwise elected to receive electronic notification in the case.⁵ When mailed notice is to be sent by the Court through a service known as the Bankruptcy Noticing Center (“BNC”), the mailed notice is eliminated for any System account holder who has already received e-mail notification of that particular notice (except for the section 341(a) notice, which is sent by mail to *all* parties included in the System database for that case, regardless of whether the addressee already received e-mail notification). However, case participants who do not have an account with the System or have only a limited-access account must be provided notice and service of any document filed electronically in accordance with the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules.

4. E-mail Addresses: All System account holders must maintain an active e-mail address to receive electronic notice and service from the System. Each System account holder has a duty to update promptly his or her account information on the System whenever there is a change in e-mail address.⁶ This applies to the System account holder’s primary e-mail address as well as to any secondary e-mail addresses.

5. Withdrawal from a Particular Case: An account holder who is no longer involved in a particular case and wishes to stop receiving notification in that case may

⁵ The e-mail sent by the System contains a hyperlink to the filed document. PACER (Public Access to Electronic Court Records Center) permits certain e-mail recipients to have one view of the document via the hyperlink without incurring a charge; typically, PACER will not charge the attorney of record for this first view, and this applies to the attorney’s primary e-mail account and any secondary e-mail accounts. Other recipients, such as those who have identified a case as being of interest, may be charged by PACER for accessing the document via the hyperlink.

⁶ See footnote 2.

request to be removed from the electronic mailing list for that case by submitting to the Clerk's Office a signed letter so indicating.

C. Signatures; Affidavits of Service.

1. **Use of a System account to file a document on the System constitutes the signature of the System account holder.**

2. Every petition, pleading, motion and other paper served or filed in accordance with these Guidelines shall contain signatures that conform to the following format: "/s/ Jane Doe" or "s/ Jane Doe." Additionally, an attorney signing such pleading or other document shall conform to any standards established for the signatures of attorneys by the United States District Court for the Southern District of New York.

3. Petitions, lists, schedules, statements, amendments, pleadings, affidavits, stipulations and other documents which must contain original signatures, documents requiring verification under Federal Rule of Bankruptcy Procedure 1008, and unsworn declarations under 28 U.S.C. § 1746, shall be filed electronically and all signatures in any PDF document shall conform to the following format: "/s/ Jane Doe" or "s/ Jane Doe." The filer must maintain a hard copy of the originally executed document for the later of two years or the entry of a final order terminating the case or proceeding to which the document relates.

D. Privacy Guidelines. Anyone filing documents with the Court shall comply with all guidelines pertaining to the privacy of individuals, including the provisions of Federal Rule of Bankruptcy Procedure 9037 and any guidelines implementing the E-Government Act of 2002. Among the privacy guidelines is the mandate to redact the first five digits of individuals' Social Security Numbers in any document intended for filing with the Court.

III. DOCUMENTS FILED UNDER SEAL.

A. Motion. A motion to file documents under seal (but not the documents themselves) shall be filed electronically. If the motion itself contains confidential information, the movant shall serve and file electronically a redacted version clearly marked as such, and submit an unredacted version *in camera*. If requested by the Court, the movant shall deliver – to the presiding judge for *in camera* review – hard copies of those documents that the movant seeks to file under seal.

B. Order. The Court shall file electronically the order determining the motion.

C. Copies. *Documents to be filed under seal should NEVER be filed electronically on the System.* Instead, where the Court grants the motion, in whole or in part, the movant shall deliver the following to the Clerk's Office:

1. A hard copy of the documents to be filed under seal (the "sealed documents"),
and

2. A CD or other electronic media containing the sealed documents in PDF along with a copy of the sealing order.

The CD or other electronic media shall be submitted in an envelope or CD mailer, clearly labeled with the case name and number, and if applicable, the document number assigned to the sealed document. Hard copies of the sealing order shall be attached to the hard copy of the sealed documents and to the CD (or other electronic media).

IV. PUBLIC ACCESS TO THE SYSTEM DOCKET.

A. Internet Access.

1. Access to View Docket and Documents Already Filed: Any person or organization may access the System at the Court's website: www.nysb.uscourts.gov. However, to gain access, an account (providing login and password) must first be obtained from the *Public Access to Electronic Court Records Center* ("PACER"). With a PACER account, the account holder may view – on the Court's System – the docket in cases and proceedings and any documents filed in them. PACER account holders are charged for use of their accounts. [For additional information on PACER charges, see paragraph D. below and the PACER website: <http://pacer.psc.uscourts.gov>.]

2. Access to File Documents: An account to the Court's System is required to file a document electronically on the Court's System [see paragraph B. of Part I above].

B. Access at the Court. Anyone may view a document free of charge that was filed on the System in the Office of the Clerk during specified hours, Monday through Friday.

C. Conventional Copies and Certified Copies. Conventional copies and certified copies of electronically-filed documents may be purchased at any of the three divisional offices of the Clerk's Office [Manhattan, White Plains and Poughkeepsie] during specified hours, Monday through Friday. The fee for copying and certification shall be in accordance with the *Bankruptcy Court Miscellaneous Fee Schedule*.

D. Access Charges. Charges required by the Judicial Conference of the United States, as authorized by 28 U.S.C. § 1930(b), for usage of the System to gain access to the Court's records, are assessed in accordance with the fees and procedures established by the Administrative Office of the United States Courts. Note that any such access charges are made by PACER and not by this Court.

E. Privacy Interests of Filers. *Information posted on the System shall not be downloaded for uses inconsistent with the privacy concerns of debtors and third parties.*