

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CASE MANAGEMENT/ELECTRONIC CASE FILING

COMMENTARY SUPPLEMENTING ADMINISTRATIVE PROCEDURES

The following information supplements the United States Bankruptcy Court for the District of South Carolina's Operating Order 02-08 of December 13, 2002 and the Administrative Procedures for the Court's Case Management/Electronic Case Filing Initiative "(CM/ECF)" by highlighting certain issues.

This Commentary is a training tool to provide CM/ECF Participants with greater clarity and depth of understanding regarding the scope, intention, and background of these documents that govern the practices and procedures for electronic case filing in this Court. Any further questions should be addressed to the Court's Help Desk at the telephone number(s) referenced in the Participant's Guide or through the Internet at cmecf_helpdesk@scb.uscourts.gov.

I. AUTHORIZATION FOR AN ELECTRONIC CASE FILING SYSTEM

1. Federal Rules of Bankruptcy Procedure 5005(a)(2) authorizes a court by local rule to permit documents to be filed, signed, or verified by electronic means...¹.

In Operating Order 02-08, the Court approves and implements The Administrative Procedures to govern CM/ECF.

Among other things, these Administrative Procedures set forth the procedures for registration of approved Participants ("Participants") and for distribution of passwords to permit electronic filings. The Administrative Procedure also reference the Participant's Guide, which is intended to provide Participant training information of a more technical nature. Supplemental information concerning the provisions of the Court's Administrative Procedures is set forth herein.

2. The Administrative Procedures and Operating Order 02-08 are available on the Court's web site.

II. THE COURT'S ADMINISTRATIVE PROCEDURES

Proposed Treatment of Issues

¹Further references to the Federal Rules of Bankruptcy Procedure shall be by Rule number only.

Part I, Scope of Electronic Filing

In Part I, Paragraph A, the Administrative Procedures outline the scope of the CM/ECF system as follows:

All pending and newly filed cases and adversary proceedings in the United States Bankruptcy Court for the District of South Carolina shall be assigned to the Case Management/Electronic Case Filing system “(CM/ECF)” as of the effective date of Operating Order 02-08. The Clerk’s Office will continue to accept paper filings but the Court encourages all parties to use CM/ECF whenever possible. (Admin. Proc. I.A.)

Comment

1. **Assignment of cases** - Courts are to designate which cases will be assigned to the electronic case filing system. A presumption exists that all documents filed in cases assigned to the electronic case filing system should be electronically filed. Some courts have designated only certain types of cases for electronic filing, while other courts have determined that all cases are appropriate for electronic filing. The Bankruptcy Court for the District of South Carolina allows Participants to electronically file both cases and adversary proceedings without limitation.

2. **Electronic filing not mandatory** - The Bankruptcy Court for the District of South Carolina does *not* require electronic filing at this time.

From the effective date of CM/ECF forward, the Bankruptcy Court for the District of South Carolina will incorporate all pending as well as newly filed cases into CM/ECF. Reference to “pending” cases refers to cases that are active as of the CM/ECF effective date. As to pending cases, a case docket in its entirety will be available electronically. In addition, all documents filed in a pending case subsequent to the CM/ECF effective date as well as documents filed in new cases will be electronically entered into CM/ECF either through direct electronic filing of the documents by Participants or by the imaging or scanning of conventionally received documents by the Clerk’s Office.

3. **Privacy concerns** - Electronic case files can be more easily accessible than traditional paper case files thereby creating a greater risk of public dissemination of sensitive information found in case files. The Bankruptcy Court for the District of South Carolina, like other Bankruptcy Courts around the country, is investigating and evaluating the privacy concerns attendant to electronic case files and is working to develop a policy per the *Recommendations of the Judicial Conference on Electronic Case File Availability and Internet Use*, which the Judicial Conference adopted on September 19, 2001.

Until the national recommendations are implemented, the Court allows for the issuance of a protective order upon application. In addition, the Judicial Conference is considering

enhancement of the sealing provisions of 11 U.S.C. §107(b) to recognize privacy concerns as a legitimate basis for placing a document under seal.

2. Eligibility, Registration, Passwords

Part I, Paragraph C. 1-7 of the Administrative Procedures governs registration for the CM/ECF system as follows:

Registration

1. Each approved Participant will be assigned one or more login and password combinations to use the CM/ECF system. The Court reserves the right to change the assigned CM/ECF login periodically.
2. To obtain a login and password, each Participant must complete a registration form that will be available on the Court's web site.
3. Each Participant must submit the registration form to the Clerk's Office at the following e-mail address: cmecf_helpdesk@scb.uscourts.gov.
4. The Clerk's Office will notify Participants by e-mail of their assigned CM/ECF login and password combination. As initially assigned, this login and password combination will be used for training purposes only and will not be activated for use on CM/ECF until the Court approves the Participant in accordance with the training as set forth in the CM/ECF Participant's Guide. Only the Participant or an authorized representative may receive the electronic notice of the assigned login and password combination.
5. Participants may wish to change their passwords periodically, and Participants may do so as set forth in the CM/ECF Participant's Guide. If a Participant believes the security of an existing password has been compromised, the Participant shall notify the Clerk's Office immediately to cancel that password. To provide this notice, Participants can contact the Clerk's Office by telephone at the telephone number(s) listed in the Participant's Guide for such purpose or by e-mail at cmecf_helpdesk@scb.uscourts.gov.
6. By accepting a login and password from the Clerk's Office, Participants in CM/ECF waive the right to receive notice by first class mail, including notice pursuant to Federal Rule of Bankruptcy Procedure 2002(a), and agree to receive notice electronically. In addition, Participants also waive their right to service by personal service or first class mail, and

Participants agree to receive electronic service except for service of a summons and complaint in an adversary proceeding under Rule 7004 and the initiating motion of a contested matter under Rule 9014. The waiver of service and notice includes notice of the entry of an order or judgment under Rule 9022.

7. A registered Participant may withdraw from participation in CM/ECF. Further, the Court can suspend a Participant from the CM/ECF system for cause, and this suspension shall be effective upon the entry of the Court's order. Upon entry of the order, the Clerk's Office will withdraw the registered Participant from CM/ECF, eliminate the Participant's password, and delete the name of the registered Participant from any applicable electronic service list. (Admin. Proc. I.C.)

Comment

1. Identity of Potential Participants - Currently, only attorneys, trustees and limited registrants are eligible to participate in the CM/ECF system. Eventually, the Court may allow others to participate.

With respect to out-of-state attorneys obtaining a login and a password, the Court believes this issue is impacted by Local Rules 83.I.04 and 83.X.05 of the United States District Court for the District of South Carolina applicable to this Court pursuant to SC Local Bankruptcy Rule 9010-1. Because Local Rules 83.I.04 and 83X.05 permit only attorneys admitted to practice before the Court to sign and file pleadings and other papers, the Court believes that issuing a login and a password to attorneys admitted pro hac vice and thereby permitting them to sign and file documents electronically would contravene our local rule requirements.

Out-of-state attorneys will follow the same local counsel requirements as they do currently. With the transition to the CM/ECF system, the only change is that local counsel, if a Participant in the CM/ECF system, will be provided with a login and a password.

With respect to notice, the Court notes that it is not incumbent upon it to provide paper or electronic notice to attorneys admitted pro hac vice. The Court satisfies its responsibilities by noticing the local counsel. In the future, the Court may consider providing some form of electronic notice to out-of-state attorneys as a courtesy.

2. Waiver of notice and service - As set forth below, once a Participant registers with CM/ECF, the individual waives certain rights and conditions and agrees to be bound by certain other rights and conditions. Specifically, a Participant consents to electronic notice and service of certain documents as set forth below.

Significantly, the Administrative Procedures intend for a Participant's consent to receive electronic notice and service to encompass the full range of notice and service *except* those documents to which the service requirements of Rule 7004 apply.

Essentially, this exception reflects the following:

(A) The requirements of conventional *service* provided in Rules 7004 and 9014 must be satisfied; and

(B) A final sentence was added to indicate that this waiver of service and notice by first class mail includes notice by mail of the entry of an order under Rule 9022.

These provisions operate independently from the notices sent by the Bankruptcy Noticing Center under Fed.R.Bankr.P. 9036.

3. **Compromised password** - The Bankruptcy Court for the District of South Carolina currently has provisions addressing the possibility of a compromised password that threatens either the integrity of the CM/ECF system or the integrity of a document filed. In this event, Participants are to notify the Clerk's office. If, however, a Participant simply wants to change a password, a Participant may do so as provided in the Participant's Guide. In this event, notification to the Clerk's Office is not necessary.

3. Consequences of Electronic Filing

Part II, Paragraph A.6. of the Administrative Procedures addresses the effect of an electronic filing as follows:

Effecting an electronic filing via the Internet in accordance with these Administrative Procedures shall constitute entry of that filing on the docket maintained by the Clerk's Office pursuant to Rule 5003. Likewise, orders, decrees, judgments, and proceedings of the Court will be entered in accordance with these Administrative Procedures, which shall also constitute entry on the docket record maintained by the Clerk's Office pursuant to Rule 5003 and for purposes of Rule 9021.

In addition, Part II, Paragraph A.1.a. provides filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight in order to be considered timely filed that day.

(Part II, Paragraph A.6.).

Comment

1. **Time of filing** - A filing is deemed made when it is acknowledged by the Clerk's Office through the CM/ECF system's automatically generated Notice of Electronic Filing ("NEF").

The NEF should appear on the Participant's screen virtually simultaneously with the electronic filing of the document absent a systemic failure (See section 12 relating to Technical Failures). Filing a document electronically does not alter the filing deadline for that document.

2. **Official record** - Electronically filed documents are considered to be entries on the official docket maintained by the Clerk's Office.

4. Entry of Court Orders

In Part II, Paragraph A.6., the Administrative Procedures provide the following:

Effecting an electronic filing via the Internet in accordance with these Administrative Procedures shall constitute entry of that filing on the docket maintained by the Clerk's Office pursuant to Rule 5003. Likewise, orders, decrees, judgments, and proceedings of the Court will be entered in accordance with these Administrative Procedures, which shall also constitute entry on the docket record maintained by the Clerk's Office pursuant to Rule 5003 and for purposes of Rule 9021. (Part II, Paragraph A.6.).

Also, in Part II, Paragraph H. the Administrative Procedures provide the following:

Orders may be signed by a judge of this Court or on his behalf electronically. Any order filed electronically as authorized by the judge has the same force and effect as if the judge had affixed his signature to a conventional order and filed and entered it accordingly. A Participant submitting a document electronically that requires a judge's signature must do so in accordance with these Administrative Procedures. (Part II, Paragraph H.).

1. **Same force and effect** - The Court's Administrative Procedures specifically state that an electronically filed court order has the same force and effect as a conventionally filed order.

2. **Authorization for Electronic Entry** - The Administrative Procedures provide that a judge can authorize personnel to electronically enter an order on his or her behalf.

5. Submission of Proposed Forms of Orders

Part II, Paragraph E. governs the submission of proposed orders as follows:

All proposed orders may be submitted electronically as outlined below:

1. With the exception of Consent Orders, electronically filed proposed orders shall be combined with the application or motion into one docket entry in accordance with Part II, Paragraph A.3., supra.
2. Electronically submitted orders shall be formatted in accordance with template instructions provided by the Clerk's Office.
3. All orders must be in PDF at the time of submission.
4. The Clerk's Office will make an electronic copy of the Participant's proposed order and transmit the proposed order to the presiding judge. Once the judge signs the order, the Clerk's Office or the judge will make the appropriate entry on the CM/ECF system to docket the order.
5. When a Participant seeks the entry of an emergency order, such as an order shortening time or order to show cause through the CM/ECF system, the Participant shall notify a courtroom deputy or the chambers of the presiding judge after filing the expedited matter.
6. Notification of defects in an order may be provided by e-mail.
7. The Clerk's Office will serve signed orders electronically to Participants. (Admin. Procedures I.E.1-7.)

Comment

1. Formatting instructions provided by the Clerk - The first page of any proposed form of order, whether submitted electronically or conventionally, must substantially conform with the order templates maintained by the Court and made available on the Court's web site www.scb.uscourts.gov. The Court must require substantial conformity with the templates because judges' signatures will be affixed electronically to these orders. Orders that do not comply substantially with the templates will be returned as defective.

2. Consent orders - Participants submitting consent orders electronically should first circulate and sign the order conventionally. The submitting Participant shall retain the order bearing the original signatures of the consenting parties for the required retention period, which is until the case or adversary proceeding is closed and all maximum allowable times for appeals in that case or adversary proceeding have expired, and the time within which a discharge of the debtor may be revoked has passed. Participants shall submit a copy of the consent order indicating electronic signatures for all consenting parties to the judge as well as a certificate of consent in accordance with the Administrative Procedures.

3. Certification of consent - There are two forms for a certificate of consent. One form is for a bankruptcy case, and the other form is for an adversary proceeding. These forms are located

on the court's web site (www.scb.uscourts.gov) under CM/ECF. The certificate of consent submitted by the Participant should certify to the following:

- (a) The terms of the electronically submitted consent order are identical to those set forth in the original consent order;
- (b) The electronic signatures on the electronically submitted consent order reference signatures of consenting parties obtained on the original consent order;
- (c) The Participant will retain the original consent order for the required retention period as prescribed by the Administrative Procedures.
- (d) The Participant will make the original consent order available for inspection upon request of the Court or any party in interest; and
- (e) Along with electronic mailing of the consent order and the certificate of consent to the judge, the Participant will simultaneously electronically file the certificate of consent.

The simultaneous electronic filing of the certificate of consent serves a dual purpose. First, by electronically filing this certification, the Participant signs for purposes of Rule 9011. Second, the signing of the certification (effectuated by its filing with the Court through the use of the Participant's login and password) authenticates not only the certification itself but also the underlying consent order that is received by the Court as an electronically mailed document.

6. Attachments and Exhibits

Part II, Paragraph A.4. of the Administrative Procedures provides the following:

Except as the presiding judge may otherwise direct, all documents, including proofs of claim, should be filed electronically in Portable Document Format ("PDF") via CM/ECF. Exhibits to documents should be submitted electronically as attachments to the document, but, if the length of an exhibit in conventional paper format exceeds twenty (20) pages, Participants shall include only excerpts of the exhibits that are directly germane to the matter under consideration by the Court. Excerpts must be clearly and prominently identified as such and the complete exhibit must be made available as a chambers copy upon request. All exhibits to documents must be made available to opposing counsel upon request and at any hearing regarding the matter. Persons filing excerpts of exhibits to do 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 relevant.

If the entire exhibit is relevant and the exhibit is in a conventional paper format that must be electronically imaged, the attorney shall make every effort to electronically submit the documents via CM/ECF on a CD rom or a 3.5 inch disk. (Part II, Paragraph A.4.)

Comment

1. **Considerations** - One issue that has arisen in most courts using electronic filing relates to attachments or exhibits not originally available to the filer in electronic form and that must be scanned or imaged into Portable Document Format (PDF) before filing. Examples include leases, contracts, proxy statements, charts, and graphs. A scanned document creates a much larger electronic file than one prepared directly on the computer (e.g., through word processing). The large document can take considerable time to file and retrieve.
2. **Excerpting** - Generally only a small portion of a much larger document is relevant to the matter before the Court. In such cases, scanning the entire document imposes an inappropriate burden on both the litigants and the Clerk's Office. To alleviate some of this inconvenience, the Administrative Procedures provide that a Participant must submit only the relevant excerpts of a larger document not to exceed 20 pages per exhibit. The responding party can submit other excerpts of the same document. An exception exists for fee applications.
3. **Chambers copies** - This Procedure is not intended to alter traditional rules with respect to materials that are before the court for decision. Thus, any material on which the court is asked to rely *must* be specifically provided to the court. Hard chambers copies of full exhibits, clearly marked as such, must be simultaneously provided with all excerpted filings with the exception of proofs of claim.
4. **Electronic filing proofs of claim** - To the extent Participants wish to file proofs of claim electronically, the Administrative Procedures allow for it. Official Form 10, the Proof of Claim, already permits creditors to file a summary if the documentation for the claim is voluminous. Attachments to proofs of claim are excepted from the chambers copy requirements.

7. Sealed Documents

_____ Part III, Paragraph A.1. of the Administrative Procedures provides for the filing of documents under seal as follows:

A motion to file a document under seal shall be filed electronically; however, the actual document to be filed under seal shall be filed conventionally. If the motion itself contains confidential information, the movant shall file and serve electronically a redacted version clearly marked as such and shall submit the unredacted version in camera. If requested by the Court, the movant shall deliver conventional paper

copies of the documents proposed to be filed under seal to the presiding judge for in camera review. The order of the Court authorizing the filing of such documents under seal shall be entered electronically by the Clerk's Office or the presiding judge. (Admin. Proc. III.A.1.)

1. **Amendment to Bankruptcy Code** - The Bankruptcy Court for the District of South Carolina recognizes that the Judicial Conference is currently considering whether to recommend amendment of 11 U.S.C. §107(b) in an effort to recognize privacy concerns. The contemplated amendment would enhance §107(b)'s sealing provision to clarify that judges may provide protection from disclosures based upon privacy and security concerns.

2. **File underlying documents conventionally** - Electronic access to the motion or order could raise the same privacy concerns that caused the Participant to file a document conventionally. For this reason, while the Administrative Procedures allow for the electronic filing of the motion to file documents under seal, Participants should file the actual documents to be placed under seal conventionally. In addition, along with the conventionally filed underlying documents, Participants are requested to provide a copy of the electronically filed motion and proposed order for the judge's reference.

8. Retention Requirements

Part II, Paragraph C.3. requires Participants to retain certain documents as follows:

Pleadings, affidavits, and other documents that must contain original signatures or that requires verification pursuant to Rule 1008 or an unsworn declaration as provided in 28 U.S.C. §1746 shall be filed electronically. The original signed document shall be maintained by the attorney of record or the party originating the document until the case or adversary proceeding is closed and all maximum allowable times for appeals in that case or adversary proceeding have expired, and the time within which a discharge of the debtor may be revoked has passed. Upon written request, the original document must be provided to other parties or the Court for review. The pleading or other document electronically filed shall indicate a signature (e.g., /s/Jane Doe). (Admin. Proc. II.C.3.)

Comment

1. **Retention of third party signatures** - Because electronically filed documents do not include original, handwritten signatures, it is necessary to retain certain signed documents in paper form in case they are needed as evidence in the future. The Administrative Procedures require retention only of those documents containing original signatures of persons *other than the person who files the document electronically*. The Participant's use of a log-in and password to file the

document is itself a signature under the Administrative Procedures.

2. **Retention period** - Courts have varied considerably on the required retention period. The Administrative Procedures for the Bankruptcy Court for the District of South Carolina requires Participants to retain original documents until the case or adversary proceeding is closed and all maximum allowable times for appeals in that case or adversary proceeding have expired, and the time within which a discharge of the debtor may be revoked has passed.

9. Signatures

Part II, Paragraph C.1. of the Administrative Procedures addresses CM/ECF's treatment of signatures as follows:

1. Filing any document by using a login and password issued by the Clerk's Office shall constitute the Participant's signature for purposes of signing the document under Rule 9011 and any other applicable authority relating to signatures. The Participant's name under whose login and password the document is submitted must be displayed by an "/s/" and typed in the space where the signature would otherwise appear (e.g., /s/Jane Doe). If the attorney is the Participant, the attorney must provide the District Court Bar number, complete mailing address, telephone number, and the name of the party the attorney represents. No person shall knowingly use or cause another person to use the password of a Participant unless such a person is duly authorized to do so by the Participant. (Admin. Proc. II.C.1.)

Comment

1. **Use of login and password constitutes signature** - The CM/ECF system is designed to require a login and password to file a document. The Court's Administrative Procedures provide that use of the login and password constitutes a signature and assures that such a signature has the same force and effect as a written signature for purposes of the Federal Rules of Bankruptcy Procedure, including Rule 9011, and any other purpose for which a signature is required on a document in connection with proceedings before the Court.

2. **The "display" requirement - s-slash** - Some users of electronic filing systems have questioned whether an s-slash requirement is worth retaining. The Court's view is that an s-slash is necessary; otherwise there is no indication that documents were ever signed. The s-slash provides some indication when the filed document is viewed or printed that the original was signed. The Administrative Procedures use the word "display" to denote that there has been a signing of a document.

3. **Authorized agent requirement** - The Administrative Procedures do not require a Participant to personally file his or her own documents. The task of electronic filing can be

delegated to an authorized agent who may use the login and password to effect the filing. However, use of the login and password to effect the filing constitutes a signature by the Participants even though Participants may not electronically file the document themselves.

4. **Third party signatures** - When documents being electronically filed that have been signed by persons other than the filer, a Participant may electronically file the document provided he or she retains the originals as previously referenced.

10. Service of Documents by Electronic Means

Part II, Paragraph B. addresses service and CM/ECF as follows:

1. General Rule: Except as otherwise provided in Part II, Paragraph B.2., infra, all documents required to be served shall be served in conventional paper form in the manner provided by the applicable statutes and rules.
2. Consent to Electronic Service: Whenever service is required to be made on a person who has agreed to accept electronic service as defined in Part I, Paragraph C.6., supra, the Court's automatically generated "Notice of Electronic Filing" constitutes service. If CM/ECF service is impracticable, service may be made by hand or by any other means authorized by Rule 7005.
3. In addition to electronic service by CM/ECF as identified in Part II, Paragraph B.2., supra, Participants shall be required to serve documents in conventional paper form in the following circumstances:
 - a. When Rules 7004, 9014 and 9016 apply;
 - b. When the Federal Rules of Bankruptcy Procedure or an order of the Court requires delivery or service upon a state or federal government entity, including the United States Attorney; or
 - c. When the Bankruptcy Code, United States Code, the Federal Rules of Bankruptcy Procedure, the Local Rules, or other federal and state statutes and authorities specify other requirements for service than those in Part II, Paragraphs B.3.(a) and (b), supra.
4. Immediately upon the entry of an order or judgment in CM/ECF, the Clerk's office will transmit to Participants in the case, in electronic form, the Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Federal Rule of Bankruptcy Procedure 9022. The Clerk's office shall provide notice in conventional form in accordance with the Federal Rules of Bankruptcy Procedure to a person who has not agreed pursuant to Part I, Paragraph C.6, supra, of the Court's Administrative Procedures to receive electronic

notice and service or who has not entered into an Electronic Bankruptcy Noticing Agreement with the Court for electronic notice from the Bankruptcy Noticing Center. (Admin. Proc. Part II., Paragraph B.)

Comment

1. **Conventional service of process required** - The new amendments to the Federal Rules of Civil Procedure 5(b), 6(e), and 77 and Bankruptcy Rules 7005, 9006(f), and 9022, effective December 1, 2001 authorizing service of documents by electronic means do not permit electronic service of process for purposes of obtaining personal jurisdiction (i.e., Rule 7004 service). Therefore, the Bankruptcy Court for the District of South Carolina requires conventional service to be effectuated where service is required under Rules 7004, 9014 and 9016.
2. **Notice of electronic filing (NEF)** - The CM/ECF system automatically generates a NEF when a document is electronically filed. The notice indicates the time of filing, the name of the party and attorney filing the document, the type of document, and the text of the docket entry. It also contains an electronic link (hyperlink) to the filed document that allows anyone receiving the notice to retrieve the document automatically.
3. **NEF constitutes service in limited circumstances** - The CM/ECF System automatically sends the notice to all case Participants registered to use CM/ECF. As set forth in the Administrative Procedures, the Bankruptcy Court for the District of South Carolina allows this notice itself to constitute service with the exceptions of adversary complaints as well as initiating motions in contested matters.
4. **Three additional days** - The December 2001 amendment to Rule 9006(f) provides that the three additional days to respond to service by mail will apply to electronic service as well. The Committee Note on the parallel amendment to Federal Rule of Civil Procedure 6(e) states:

Electronic transmission is not always instantaneous, and may fail for any number of reasons. It may take three days to arrange for transmission in readable form. Providing added time to respond will not discourage people from asking for consent to electronic transmission, and may encourage people to give consent. The more who consent, the quicker will come the improvements that make electronic service ever more attractive.
5. **SC Local Bankruptcy Rule 9014-2 and Clerk's Instruction: Motions on Passive Notice - 9014-2(b) Serve and Transmit the Motion** - Pursuant to the Court's Local Rule, all motions or applications approved for passive notice must be supported by a certificate of service. The party is required to simultaneously file the certificate of service when filing the motion, notice of hearing on the motion and proposed order.

The certificate of service must specify the parties served electronically through the Court's electronic mail notification system and the parties served conventionally by first class mail. The certificate should list the parties in each category by name. If the certificate currently includes the mailing addresses used, the Clerk's Office encourages the continuance of this practice for reference to those parties receiving service by first class mail.

In addition to electronic service by CM/ECF through the NEF, the Administrative Procedures requires the service of documents in hard (paper) copy to the following circumstances:

- (a) When Rules 7004, 9014 and 9016 apply:
- (b) When the Federal Rules of Bankruptcy Procedure or an order of the Court requires delivery or service upon a state or federal government entity, including the United States Attorney; or
- (c) When the Bankruptcy Code, United States Code, the Federal Rules of Bankruptcy Procedure, the Local Rules, or other federal and state statutes and authorities specify other requirements for service than those in Part II, Paragraph B.3.(a) and (b), supra.

11. Notice of Court Orders and Judgments

Part II, Paragraph B.4. of the Administrative Procedures, addresses the electronic noticing of a judge's entry of an order or judgment as follows:

Immediately upon the entry of an order or judgment in CM/ECF, the Clerk's Office will transmit to Participants in the case, in electronic form, the Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Federal Rule of Bankruptcy Procedure 9022. The Clerk's Office shall provide notice in conventional form in accordance with the Federal Rules of Bankruptcy Procedure to a person who has not agreed pursuant to Part I, Paragraph C.6, supra, of the Court's Administrative Procedures to receive electronic notice and service or who has not entered into an Electronic Bankruptcy Noticing Agreement with the Court for electronic notice from the Bankruptcy Noticing Center. (Admin. Proc. Paragraph B.4.)

Comment

1. Notice of orders under Rule 9022 - Amendments to Rule 9022 authorize electronic notice of court orders where the parties consent. The Administrative Procedures provide that, for all Participants, electronic notice of the entry of an order or judgment has the same force and effect as traditional notice. The CM/ECF System automatically generates and sends a Notice of

Electronic Filing upon entry of the order or judgment. The notice contains a hyperlink to the document.

12. Technical Failures

If a Participant cannot access CM/ECF via the Internet to effect a filing during regular business hours of the Clerk's Office, the Participant shall contact the Clerk's Office, speak with a member of the CM/ECF HelpDesk to confirm that CM/ECF is not accessible, state why an immediate filing is necessary, and make suitable arrangements with the Clerk's Office for the filing to occur. After the Participant submits the filing to the Clerk's Office and when CM/ECF is accessible, a deputy clerk with electronically enter and docket the filing.

If a Participant cannot access CM/ECF via the Internet to effect a filing after regular business hours of the Clerk's Office, and the filing is made untimely as the result of a technological failure of CM/ECF, the Participant may seek appropriate relief from the Court.

Comment

1. **Court's Web site inaccessible** - CM/ECF is designed so that Participants access the Court through its Internet web site. The Administrative Procedures address the possibility that a party may not meet a filing deadline because the Court's web site is inaccessible. The provision also addresses the possibility that the Participant's own unanticipated system failure might make the filer unable to meet a filing deadline.
2. **Court's Discretion to Grant Relief** - The Administrative Procedures do not require the Court to excuse the filing deadline allegedly caused by a system failure. The Court has discretion to grant or deny relief in light of the circumstances.

13. Public Access

Internet Access - Any person or organization may access this Court's Internet site at the following address: www.scb.uscourts.gov. Access to the docket and documents in CM/ECF through the Web PACER Internet site will require registration with the PACER Billing Center (telephone number: 1-800-676-6856). Fees required by the Judicial Conference of the United States as provided in 28 U.S.C. §1930(b) and the Appendix thereto for electronic access to Court records are assessed in accordance with the procedures established by the Administrative Office of the United States Courts. (Admin. Proc. IV.A. and D.)

Public Access at the Court - Access by the public to the documents filed in CM/ECF and to the CM/ECF docket is available in the Clerk's Office for viewing during regular business hours. (Admin. Proc. IV.B)

Comment

1. **Privacy** - A subcommittee of the Judicial Conference on Court Administration and Case Management is currently assessing the privacy concerns arising from electronic case filing. See *Report on Privacy and Public Access to Electronic Case Files* which was approved by the Judicial Conference on September 19, 2001.

2. **Limit Remote Access** - The practice of the Bankruptcy Court for the District of South Carolina is consistent with Judicial Conference policy to limit remote public access to electronic case files to those who have obtained a PACER password.

14. Creditor Matrix

A matrix submitted electronically shall be prepared in accordance with instructions provided by the Clerk. See Clerk's Instruction: Submission of the List of Creditors on Computer Diskette (CI-1007-1(a)).

1. **SC Local Bankruptcy Rule 1007-1 - List of Creditors** - This Local Rule sets forth the requirements for submission of a creditors' matrix to the Court. The matrix must be filed in accordance with SC Local Bankruptcy Rule 1007-1: List of Creditors and the Clerk's Instruction: Submission of the List of Creditors on Computer Diskette (CI-1007-1(a)).

