

**United States Bankruptcy Appellate Panel
for the Ninth Circuit**

**Administrative Order Regarding Electronic Filing in
BAP Cases**

[October 1, 2009]

The United States Bankruptcy Appellate Panel for the Ninth Circuit (“BAP”) adopts the following provisions to govern the electronic filing of documents in cases before the BAP. These provisions may be amended from time to time, with or without prior notice, by further order of the BAP. The BAP may deviate from these procedures in specific cases if deemed appropriate in the exercise of its discretion.

Questions concerning electronic filing should be directed to the Clerk's office at 626-229-7220 or 626-229-7225, or can be emailed to:

`cmecf_bapca9@ca9.uscourts.gov`

Rule 1 - Effective Date; Electronic Filing Mandatory for Attorneys

- (a) For all BAP cases filed on or after March 31, 2010, electronic filing using the BAP's Case Management/ Electronic Case Filing (CM/ECF) docketing system is mandatory for all attorneys unless the BAP grants a request to be exempted from the requirement.
- (b) An attorney who seeks exemption from the requirement of mandatory electronic filing may file a motion which states the reasons why the attorney should be exempted from electronic filing. The BAP Clerk shall have the authority to grant or deny such motions.

Rule 2 - Registration and Training

- (a) Registration is required to obtain a login and password for use of CM/ECF.
- (b) Registration is required specifically for the BAP, and this registration is separate from registration for PACER or ECF in other courts.
- (c) Licensed attorneys authorized to practice before the BAP may register

without leave of court at:

http://pacer.psc.uscourts.gov/announcements/general/ea_filer.html

- (d) Any litigant who is not a licensed attorney authorized to practice before the BAP may file a motion requesting leave to register for CM/ECF.
- (e) The Ninth Circuit Court of Appeals has computer-based training modules explaining CM/ECF, PACER reports, and electronic filing. These training modules can be accessed by logging into the court of appeals website (www.ca9.uscourts.gov) and selecting "CM/ECF". The BAP strongly encourages all filers to review these training materials, as the BAP's electronic filing system is very similar to that of the court of appeals.

Rule 3 - Documents Which Can Not Be Filed Electronically

- (a) Excerpts of Record. Unless otherwise ordered, the form, content and number of paper copies of a party's excerpts of record must continue to comply with the requirements of Federal Rule of Bankruptcy Procedure 8009(b) and Ninth Circuit BAP Rule 8009(b)-1. A party may deliver to the BAP Clerk's Office optional courtesy chambers copies of the excerpts of record on CD or DVD, provided that these chambers copies comply with the requirements for CD or DVD copies of excerpts of record stated at the end of this order.
- (b) Sealed Documents & Motions to File Documents Under Seal. Sealed documents must be filed in paper format and must be accompanied by an electronic version of the document on either CD or DVD. This includes motions for permission to file a document under seal. The motion should state whether the filing party believes the motion to seal itself may be made available to the public or should remain sealed.

Rule 4 - Signature

- (a) All electronic filings must be signed.
- (b) A signature consists of an "/s/" immediately followed by the typed name of

each signatory, or by some substantially similar method effectively demonstrating the signatory's intent to sign the filing.

Rule 5 - Service

- (a) A Certificate of Service is required for all electronic filings, and filers must comply with the provisions of Federal Rule of Bankruptcy Procedure 8008(b) and (d) when filing electronically.
- (b) Sample Certificates of Service for documents electronically filed are attached to this Order.
- (c) The CM/ECF system will generate a Notice of Docket Activity when any document is electronically filed. This notice constitutes service of the document on all parties who have registered as BAP electronic filers pursuant to Rule 2, above. Such registration constitutes consent to service via the Notice of Docket Activity.
 - (I) A filing party may obtain the names and addresses of parties who have not registered for BAP electronic filing by logging into CM/ECF, then selecting "Reports", then selecting "Service List", and then typing in the case number.
 - (ii) A filing party is not required to serve a paper copy of any electronically-filed document on any party who has registered as a BAP electronic filer.
 - (iii) Except as provided in the BAP's fax filing rule (9th Cir. BAP Rule 8008(a)-3), or unless otherwise agreed in writing between the parties, a filing party must serve a paper copy of any electronically-filed document on any party who has not registered as a BAP electronic filer, and must comply with Federal Rule of Bankruptcy Procedure 8008(b), (c) and (d).
 - (iv) Unless otherwise ordered, a Notice of Docket Activity generated after close of business (5:00 p.m. Pacific Time), or on a weekend or holiday will be deemed served on all registered BAP electronic filers at the start of the next business day.

- (d) For any document filed in paper format, the filer must comply with Federal Rule of Bankruptcy Procedure 8008(b), (c) and (d).

Rule 6 - Filing Deadlines

- (a) Electronic filing is permitted at all times, except when the system is temporarily unavailable due to routine or emergency maintenance.
- (b) Unless otherwise ordered, an electronic filing will be considered filed as of the date and time the filing is successfully completed. The BAP's CM/ECF system determines the date and time a filing is completed. A filing is timely only if it is accomplished in accordance with the deadlines set by all applicable court notices, orders, rules and statutes.
- (c) If a technical failure prevents timely electronic filing of any document, the filing party should promptly seek relief from the BAP.

Rule 7 - Technical Requirements

- (a) All electronic filings must be in Portable Document Format (also known as .pdf or Adobe Acrobat Format).
- (b) Except as otherwise specified in this Rule, or as otherwise ordered, the text of all electronic filings must be searchable using Adobe Acrobat's text search function.
- (c) For some documents, primarily exhibits, a text-searchable version might not be available. If so, the electronic filer may upload a version that is not text searchable.
- (d) Until further notice, the maximum size for a single electronic filing, including attachments, is 5 megabytes. Electronic filers seeking to file a document in excess of that size should contact the BAP Clerk's Office for guidance.

Rule 8 - Hyperlinks

- (a) Electronic filings may contain hyperlinks to statutes, rules, regulations, and opinions.
- (b) Hyperlinks do not replace citations to the appendix, record, or legal authority. Documents must contain standard citations in support of statements of fact or points of law, in addition to any hyperlink. Hyperlinks are simply mechanisms for accessing material cited in a filed document and are not considered part of the appellate record. The BAP accepts no responsibility for the availability or functionality of any hyperlink and does not endorse any organization, product, or content at any hyperlinked site.

Rule 9 - Privacy

- (a) In compliance with Fed. R. App. P. 25(a)(5) and Fed. R. Bankr. P. 9037, parties must refrain from including, or must partially redact where inclusion is necessary, the following personal data identifiers from all documents filed with the BAP:
 - ▶ Minors' names (use initials only);
 - ▶ Social Security numbers (use last four digits only);
 - ▶ Dates of birth (use year of birth only);
 - ▶ Financial account numbers (identify the type of account and institution and provide the last four digits of the account number).
- (b) The filer bears sole responsibility for redacting documents.

Rule 10 - Other limitations and restrictions concerning Electronic Filing

- (a) Except as otherwise specified in this Rule, or as otherwise ordered, an electronic filer duly registered pursuant to Rule 2, above, may only file documents in BAP appeals where he or she is counsel of record, or where he or she is a party of record appearing pro se.
- (b) Except as otherwise specified in these Rules, or as otherwise ordered, an electronic filer may not submit (by US Mail or by fax or by email) additional

copies of any documents filed electronically through CM/ECF.

- (c) A party seeking to appear as an Amicus Curiae in a BAP appeal should contact the BAP Clerk's Office for guidance if they desire to file electronically.

Rule 11 -What is Attached to the Docket available on PACER

- (a) Unless otherwise ordered, all documents that are filed electronically will be attached to the PACER docket.
- (b) Except as provided in section (c) of this rule, or unless otherwise ordered, if the BAP receives documents on CD or DVD, the BAP will attach an electronic copy of those documents to the PACER docket.
- (c) Excerpts of Record will not be scanned and will not be attached to the PACER docket. Bankruptcy Court filings and transcripts used as the record on appeal will not be scanned and will not be attached to the PACER docket. Voluminous documents (documents over 75 pages long) will not be scanned and will not be attached to the PACER docket, unless the BAP determines, in its sole discretion, that it is practicable to scan the document and to attach the document to the PACER docket.
- (d) Except as provided in section (c) of this rule, or unless otherwise ordered, when the BAP receives a document only in paper format, the BAP will scan the document and attach it to the PACER docket.

REQUIREMENTS FOR OPTIONAL CHAMBERS COPIES OF EXCERPTS OF RECORD ON CD OR DVD

Parties have the option of delivering to the BAP Clerk's Office optional courtesy chambers copies of the excerpts of record on CD or DVD. Any such copies delivered must comply with the following requirements.

1. The party must provide the court with four CD/DVD copies, and the CD/DVD copies must be in Adobe Acrobat ".pdf" format.
2. If any document to be included in the excerpts is available on the bankruptcy court's PACER or ECF website in .pdf format, the party must download the PACER or ECF version of the document for its CD/DVD excerpts, rather than scanning a paper copy of the document for its CD/DVD excerpts.
3. Each document in the CD/DVD excerpts must have its own file, and each file must be named to match the label for that document used in the paper original. For example, a document labeled "Bankruptcy Court Order" in the paper original must be matched by a .pdf file on the CD/DVD named "Bankruptcy Court Order." As another example, a document labeled "Tab 1" in the paper original must be matched by a .pdf file on the CD/DVD named "Tab 1."
4. The CD/DVD excerpts must contain a table of contents in a file named "Table of Contents." The Table of Contents must describe the contents by tab number and document title/description. See 9th Cir. BAP R. 8009(b)-1(b). The Table of Contents must be text-searchable.
5. The data on each CD/DVD must be identical to that contained in the paper original. Each CD/DVD must be clearly labeled with the Debtor's name and the BAP case numbers and must be in a protective case.
6. The party must scan each CD/DVD for viruses and file with this Court a statement under penalty of perjury certifying that each CD/DVD is a true copy of the paper original, that each CD/DVD has been scanned for viruses, specifying the software used for the scan, and that to the best of the party's knowledge, each CD/DVD is free of viruses. The certification shall also state that counsel (or the party, if unrepresented by counsel) has carefully read these requirements and has fully complied with them.
7. Failure of the party to fully comply with these requirements may result in rejection of the party's CD/DVD excerpts.

**SAMPLE CERTIFICATES OF SERVICE
FOR DOCUMENTS FILED USING CM/ECF**

Certificate of Service When All Case Participants Are CM/ECF Participants

I hereby certify that on _____[*date*]_____, I electronically filed the foregoing document with the Clerk of the Court for the Bankruptcy Appellate Panel for the Ninth Circuit by using the CM/ECF system.

I certify that all parties of record to this appeal either are registered CM/ECF users, or have registered for electronic notice, or have consented in writing to electronic service, and that service will be accomplished through the CM/ECF system.

_____/s/_____

Certificate of Service When Not All Case Participants Are CM/ECF Participants

I hereby certify that on _____[*date*]_____, I electronically filed the foregoing document with the Clerk of the Court for the Bankruptcy Appellate Panel for the Ninth Circuit by using the CM/ECF system.

I further certify that parties of record to this appeal who either are registered CM/ECF users, or who have registered for electronic notice, or who have consented in writing to electronic service, will be served through the CM/ECF system.

I further certify that some of the parties of record to this appeal have not consented to electronic service. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days, to the following parties:

_____/s/_____