

**Entering the Twenty-First Century:
Some Views on Electronic Case Filing from the U.S. Trustee's Perspective**

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Not too long ago, law offices had electric typewriters and used carbon paper for copies. Mag card typewriters were considered high tech and cell phones, fax machines, and personal computers existed only in dreams. Now, in the 21st century, many of us find ourselves anxious about how swiftly technology changes our lives. When the Clerk of Court sends out a notice about electronic case filing (ECF), we wonder how we will adjust. Instead of entertaining a vision of saving space and time by eliminating or reducing paper files, most of us try to see if the new system can still deliver reams of paper. We think we must hold and see real paper to do our jobs.

Case Management/Electronic Case Filing (CM/ECF) is being developed by the Administrative Office of the United States Courts (AOUSC) both as the new case docketing system and as a method for electronic filing of documents. As U.S. Trustees we are not always on the forefront of technology, but we have been involved in several ECF pilots^{2/}. This article is not intended to be a primer from experts on ECF, but a vehicle to start bankruptcy professionals thinking about the future with ECF. The transition to ECF requires some adjustments to be made, and many advantages of ECF are not readily apparent. However, the temptation to grumble and grouse about change should not be allowed to sabotage the vision of savings that can be afforded by ECF. Electronic case filing must be welcomed because it is inevitable, but it should be welcomed because in the long run it will improve the administration of cases and make life easier for users of the bankruptcy system.

Goals of ECF

The stated goals of CM/ECF include “. . . making detailed case information available to attorneys and the public at low cost over the Internet, thereby eliminating costs and delays associated with paper files, and enabling judges to manage caseloads and to decide controversies in a more efficient manner.”^{3/}

Sometimes this is expressed as a paperless office, but making a “paperless” Clerk’s office

^{1/}The views expressed in this article are those of the authors and are not intended to represent the views of the Department of Justice, the Executive Office for United States Trustees, or any other United States Trustees.

^{2/}The pilot districts in bankruptcy for CM/ECF were the Southern District of New York, District of Delaware, Eastern District of Virginia, Northern District of Georgia, and Southern District of California.

^{3/}General Order No. 5, United States Bankruptcy Court for the Northern District of Georgia, Amended and Restated Order Concerning Electronic Filing, January 26, 2000.

does not necessarily make the offices of the other users “paperless.” Nonetheless, less paper has to be a goal of ECF, if benefits are to be realized.

Finally, whether an express goal or not, CM/ECF shifts some activities, such as docketing, from the Clerk to the filer of the document. This saves the Clerk’s valuable resources for other tasks, but can also be an advantage to the filer.

Advantages of ECF

ECF is not always easy, but when implemented it provides many advantages over the old conventional method of filing paper copies. Some of these advantages are:

- Pleadings can be filed 24 hours per day seven days per week.
- Electronically filed documents can be retrieved from any location at any time.
- Delays in filing and in receiving filed information are eliminated.
- Case progress can be more easily monitored because the dockets and the pleadings are available electronically. The summaries of ECF activities in a case can help in monitoring what is happening in the case.
- The open calendaring system of CM/ECF allows the attorney filing a motion to select the date and time for the hearing of the motion.⁴
- Less time is wasted in the storage and retrieval of documents when they are in an electronic format.
- Some trustees say it is easier to review petitions and schedules on a computer screen than by flipping through paper copies. (Other trustees may disagree and feel more comfortable with paper.)
- Electronic files will save file space and should be less labor intensive to maintain. The U.S. Trustee offices have realized that fewer paper files need to be maintained, saving both space and labor.
- Transmittal of documents by electronic means saves postage, fees for couriers, and travel expenses associated with delivery of paper documents.
- Proofs of claim are more easily and readily made available for review by the trustees, the U.S. Trustee, and the bar.

⁴This may not be the practice in all courts utilizing CM/ECF.

Some Problems with ECF

The transition and adjustment to ECF has not been easy. As with any new venture, problems are more common at the outset, but gradually as users make the proper adjustments the problems lessen and the advantages become more apparent. Some of the problems that must be faced are as follows:

- Offices have become acclimated to using paper and to receiving conventional mail.
- If electronically filed documents are e-mailed and then printed, and also faxed and mailed, more paper documents are created than with conventional filing.
- When the court's web site is down, access to the files is unavailable. This seems to be more of an issue during the early days of ECF within a district. Downtime decreases as the system develops, but it is never completely eliminated.
- Sometimes handwritten documents scanned into the computer are difficult to read. These scanned documents also take more time to download from the court's web site.
- Users who are used to dealing with paper find reviewing a document on a screen less efficient than reviewing a paper copy. These users often print a copy, which eliminates many of the advantages of ECF.
- Undisclosed petition preparers are often identified by certain characteristics of the documents they prepare and these identifying characteristics are less apparent on scanned documents.
- ECF causes users to receive an enormous amount of e-mail and systems must be developed for processing these e-mails through the office. Some U.S. Trustee offices have the e-mails routed to a single clerk, who functions as an electronic mail clerk. This also avoids the problem of pleadings not being addressed when the attorney is out of the office.
- In some instances the CM/ECF system does not contain all of the modifications developed in previous systems. For example, previous systems were able to automatically implement the U.S. Trustee's Chapter 7 case assignments with flexibility. Unless modified, CM/ECF treats trustee case assignments with more of a one-size-fits-all approach.
- The use of electronic signatures makes some people nervous and can lead to abuse. Most districts that try ECF require the filing attorney to retain the original

signatures in the file for a designated period.⁵¹ Some less ethical attorneys may be tempted to file a petition before it is signed by the debtor. One can only assume that the court would treat this as a most serious breach.

- The computer is less forgiving than humans and does not automatically catch mistakes, and the consequences of mistakes seem to multiply when dealing with electronic filings. For example, the U.S. Trustee spends considerable time working with attorneys who have mis-filed petitions and schedules. There have been several instances of the wrong schedules being attached to the petition, where Mr. Jones' matrix and schedules were attached to Mr. Smith's petition. If this kind of error is not caught and corrected immediately, the wrong creditors receive notice of the bankruptcy and the important meeting dates, hearing dates, and deadlines in the case.
- When filing claims electronically, creditors are less likely to attach supporting documentation to the claim, making review by the trustee and others more difficult.

Preparations for the Coming of CM/ECF

The bankruptcy world is rapidly changing, and, just as some attorneys resisted providing the mailing matrix on disc, some would prefer to continue the conventional filing of paper. The use of ECF may be optional at first as it was in the pilot districts, but it will be optional only during the phase-in period. Sooner or later all filings in all districts will be made electronically, and attorneys would be wise to prepare.

Training is the most important aspect of an attorney's preparation for CM/ECF. Both attorney and staff should take advantage of the training offered by the Clerk of Court. Of particular importance is the proper use of the "docket event dictionary" that lists various types of pleadings. Anyone filing a pleading must select the appropriate "event" from the dictionary and enter that event in the system when filing the pleading. Essentially, CM/ECF shifts the burden of creating the docket entry from the clerk to the filer. When a pleading is properly labeled, a person receiving electronic notice of the filing can often tell just from the subject line of the e-mail whether it will be necessary to open the e-mail for further review of the actual pleading. Unfortunately, some users routinely file their pleadings under generic labels such as "notice of filing" or "motion to authorize" even when the event dictionary lists the specific document being filed. Use of an uninformative generic label requires further, and often unnecessary, processing of the e-mail notification.

⁵¹The Administrative Procedures adopted by the United States Bankruptcy Court for the Eastern District of Virginia in Standing Order No. 01-6, dated November 1, 2001, require the filing attorney to retain original signatures for no less than three years following the closing of the case and, upon request of the Court, to provide the original documents for review.

Practicing in the CM/ECF environment may also require the expenditure of funds for new equipment. Most important, the U.S. Trustee has found that CM/ECF works better when high speed data lines are utilized. Filing, reviewing, or retrieving documents using a dial-up service with a standard modem is simply too slow, and any efficiencies derived from CM/ECF can quickly be dissipated while waiting for the download of one large document using dial-up service. In addition, users are required to have software to convert word processing files to portable document format (.pdf) files, as well as a scanner and scanning software to enable the creation of a .pdf file from text in a non-electronic form. Computers with increased disk storage may be required, as well as high speed printers. Further, many users find that larger flat screen monitors make reading files from the computer easier and faster, because they show more text and eliminate the need to scroll the document every few lines. Finally, the use of antiviral software is required.

In addition to obtaining the necessary training and computer hardware and software, bankruptcy professionals should take the time to consider how to adjust systems and processes to accommodate CM/ECF. What paper needs to be printed and what can be eliminated? How will the e-mail be delivered and processed within the office? How will attorneys ensure that the signature is on the original document before it is filed electronically? The systems that worked for paper documents may not work for electronic documents.

Conclusion

In many of the U.S. Trustee offices served by ECF, paper files that were once relied upon have been replaced by electronic files. Some trustees report that it is easier to conduct Section 341 meetings with ECF, downloading information from the schedules to easily portable laptop computers instead of carrying boxes of petitions and schedules to the meeting rooms. Others continue to rely only on paper copies of all documents, and their printers spend hours printing schedules.

If an attorney's goal is to operate in the same manner as before electronic filing, it will seem as if the attorney is doing the work of the Clerk's office and the burdens of ECF outweigh the benefits. Anyone expecting to be instantly "paperless" with the coming of ECF is well advised not to sell that printer and not to eliminate the files. If, however, an attorney looks to the future, the benefits will come. The process of transition requires training, proper equipment, and the willingness to develop the proper systems within the office. Moreover, coordination and cooperation among the various offices using ECF is necessary to make it work properly. The transition is not painless and not always smooth, but in the end electronic filing will make for a better and more efficient bankruptcy system.