

RECEIVED
2/3/05

04-BK-013



"loviner, paula"
<paula.loviner@dcma.mil>
02/02/2005 05:06 PM

To <Rules_Comments@ao.uscourts.gov>
<larsend@dodgc.osd.mil>, "retson, nicholas"
cc <nicholas.retson@dcma.mil>, "Mack, Brenda D. (Lt Col)"
<Brenda.Mack@dcma.mil>

bcc

Subject Comments on the impact of proposed rule change to
Bankruptcy Rule 5005(a)(2).

To the Secretary of the Committee on Rules of Practice and Procedure,
Administrative Office of the United States Courts, Washington, D.C. 20544

The following comment are from the Defense Contract Management Agency (DCMA), a U.S. Department of Defense (DoD) agency, in response to the Opportunity for Public Comments on the impact of the November 10, 2004 notice of proposed rule change to Bankruptcy Rule 5005(a)(2).

There are a couple of factors to consider in determining the potential impact of the proposed amendment on DoD agency attorneys. First, the proposed amendment only adds to the Bankruptcy Court's discretion with regard to electronic filing. It allows the Court to require electronic filing, but still leaves it the option to simply permit it. However, the Committee Note to the proposed amendment states that many courts have already required electronic filing. This appears to be borne out by the attachment that lists the bankruptcy courts that either have implemented or are implementing Case Management/Electronic Case Filing systems. Given the cost savings that electronic filing can provide, it appears more likely than not that courts that have not required it thus far will do so in the near future.

Second, DoD agency attorneys normally would not be filing directly with the Bankruptcy Court. The Department of Justice represents DoD and other Federal agencies in connection with bankruptcy litigation (See, 28 USC 516). Consequently, the responsibility for electronic filing would fall in the first instance on DoJ attorneys. So, it can be argued that the major impact of a requirement to file electronically falls on DoJ, except perhaps in the instance where a DoD attorney has been appointed as a Special Assistant U.S. Attorney (SAUSA).

Some DoD agency attorneys would need to be prepared for electronic filing as part of their major function in court litigation: to provide assistance to the DoJ attorney. The main thing that electronic filing requires is to scan a document into an acceptable format, with Adobe Acrobat (.pdf) being the recommended format. Providing a scanned copy of suggested pleadings to the DoJ attorney won't help much though because the pleading still would need to be signed by the DoJ attorney before it can be filed and it likely would undergo revision before filing. In either instance, the pleading would have to be re-scanned after revision and signed before it could be electronically filed. So, providing DoD attorneys with the capability to electronically file may not provide significant added value in the litigation process, except as a backstop to a DOJ attorney who does not have that capability or for a DoD attorney that has been appointed a SAUSA.

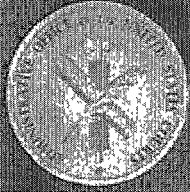
One concern is whether a judicial requirement for electronic filing operates as consent by the

required party to be served electronically pursuant to FRCP 5(b)(2)(D). Though this does not bear directly on the bankruptcy rule change proposed, it bears mentioning. In the November 10, 2004 Memorandum from the Committee on Rules of Practice and Procedure the Committee notes the concern. It goes on to say that a Committee Note could be added stating that no consent to service was implied, but states there really is no need for that as a practical matter since all courts allow "opt out" for those that do not wish electronic service. The proposed rules do not echo this kind of "opting out." In fact, all the Committee Note references are court exceptions for those who cannot easily file by electronic means and "good cause" exceptions. So, notwithstanding that it may be current practice to allow a party to avoid the electronic filing requirement by simply stating it is his or her wish not to, there is nothing in the rules to prevent a court from denying an "opt out" on that basis. The Committee should expressly resolve the issue by either stating that consent to service was not implied or memorializing in the Committee Note the statement it makes in its November 10 memorandum that all courts that have required electronic filing have also provided an "opt out" for those not wishing electronic filing.

An important practice note concerns the impact of *Fox v. American Airlines, Inc.*, 295 F. Supp. 2d 56 (D.D.C. 2003). In that case, Plaintiffs failed to respond to a motion by defendant to dismiss Plaintiffs' amended complaint. The court dismissed the amended complaint and Plaintiffs filed a motion to alter or amend judgment. Plaintiffs argued that they did not receive a copy of the motion to dismiss the amended complaint via email pursuant to the applicable CM/ECF rules. The court essentially held that that did not relieve Plaintiffs from the responsibility of checking the court dockets. So, under that case, a party operating under electronic filing rules may also be responsible for checking the court's docket.

If DoD agency attorneys are to be provided with the capability to electronically file, the major elements necessary to perform electronic filing are (1) proper equipment, (2) a PACER account and (3) any necessary training. These items will have a resource impact. The computers, operating systems, software and internet connections that most DoD agency attorneys currently have should meet equipment requirements. DoD agency attorneys would also need ready, secure access to scanners and Adobe software. This is one area which may pose significant risk of exposure of sensitive information unless each legal office has such equipment dedicated to its use. PACER is a service of United States Judiciary. It allows users to obtain case and docket information from Federal Appellate, District and Bankruptcy courts, and from the U.S. Party/Case Index. The extent and cost of any necessary training is an unknown factor.





CM / ECF

Case Management / Electronic Case Files

Local CM/ECF Court Information

The following courts have either implemented or are implementing the Case Management/Electronic Case Filing (CM/ECF) system. Click on the links below to learn more about the court's CM/ECF site including filing requirements and procedures, manuals, and other pertinent information. For links to file and search in local courts, [click here](#).

U.S. Bankruptcy Courts

● Alabama Middle Bankruptcy Court	http://www.almb.uscourts.gov/CM_ECF/cm_ecf.htm
● Alabama Northern Bankruptcy Court	http://www.alnb.uscourts.gov
● Alabama Southern Bankruptcy Court	http://www.alsb.uscourts.gov/EFiling.htm
● Alaska Bankruptcy Court	http://www.akb.uscourts.gov/
● Arizona Bankruptcy Court	http://www.azb.uscourts.gov/
● Arkansas Bankruptcy Court	http://www.arb.uscourts.gov/CM-ECF/cm-ecf.htm
● California Northern Bankruptcy Court	http://www.canb.uscourts.gov
● California Southern Bankruptcy Court	http://www.casb.uscourts.gov/html/frontcounter.htm
● Colorado Bankruptcy Court	https://ecf.cob.uscourts.gov/
● Connecticut Bankruptcy Court	https://ecf.ctb.uscourts.gov/
● Delaware Bankruptcy Court	http://www.dcb.uscourts.gov/cm-ecf.html
● District Of Columbia Bankruptcy Court	http://www.dcb.uscourts.gov/cm_ecf.htm
● Florida Middle Bankruptcy Court	http://www.flmb.uscourts.gov/cmecf.htm
● Florida Northern Bankruptcy Court	http://www.flnb.uscourts.gov/CM/ECF/index.htm
● Georgia Northern Bankruptcy Court	http://www.ganb.uscourts.gov
● Hawaii Bankruptcy Court	http://www.hib.uscourts.gov/cmecf
● Illinois Central Bankruptcy Court	http://www.ilcb.uscourts.gov/cmecf/cmmain.htm
● Illinois Northern Bankruptcy - Chicago	http://www.ilnb.uscourts.gov/cmEcf/index.html
● Illinois Southern Bankruptcy Court	http://www.ilsb.uscourts.gov/cmecf.htm
● Indiana Northern Bankruptcy Court	http://www.innb.uscourts.gov/cmecf.htm
● Iowa Northern Bankruptcy Court	http://www.ianb.uscourts.gov/ecf/index.asp
● Iowa Southern Bankruptcy Court	http://www.iasb.uscourts.gov
● Kansas Bankruptcy Court	http://www.ksb.uscourts.gov
● Kentucky Eastern Bankruptcy Court	http://www.kyeb.uscourts.gov/kyeb/CM/ECF/cmecf.htm#attention
● Kentucky Western Bankruptcy Court	http://www.kywb.uscourts.gov/fpweb/cm_ecf/cmecf.htm
● Louisiana Eastern Bankruptcy Court	http://www.laeb.uscourts.gov/ECFINFO/ElecFile.htm
● Louisiana Middle Bankruptcy Court	http://www.lamb.uscourts.gov/cm-ecf.htm
● Louisiana Western Bankruptcy Court	http://www.lawb.uscourts.gov
● Maine Bankruptcy Court	http://www.meb.uscourts.gov/
● Maryland Bankruptcy Court	http://www.mdb.uscourts.gov/cmecf/cmecfframe.asp
● Massachusetts Bankruptcy Court	http://www.mab.uscourts.gov/CM/ECF/SignUp/ecf_default.htm
● Michigan Western Bankruptcy Court	http://www.miwb.uscourts.gov/content/cmecf/
● Mississippi Northern Bankruptcy Court	http://www.msnb.uscourts.gov/cmecf/Default.htm

● Missouri Eastern Bankruptcy Court	http://www.mocb.uscourts.gov
● Missouri Western Bankruptcy Court	http://www.mow.uscourts.gov/cmecf.htm
● Nebraska Bankruptcy Court	http://www.neb.uscourts.gov/cmecf_general_information.htm
● Nevada Bankruptcy Court	http://www.nvb.uscourts.gov/
● New Hampshire Bankruptcy Court	http://www.nhb.uscourts.gov/CMECF_Page/cmecf_page.html
● New Jersey Bankruptcy Court	http://racer.njb.uscourts.gov/ecf/
● New York Eastern Bankruptcy Court	http://www.nyeb.uscourts.gov/cm_ecf.htm
● New York Northern Bankruptcy Court	http://www.nynb.uscourts.gov/cmecf.htm
● New York Southern Bankruptcy Court	http://www.nysb.uscourts.gov
● New York Western Bankruptcy Court	http://www.nywb.uscourts.gov/ecf/index.html
● North Carolina Eastern Bankruptcy	http://www.nceb.uscourts.gov/cmecf/home.htm
● North Carolina Middle Bankruptcy Court	http://www.ncmb.uscourts.gov
● North Carolina Western Bankruptcy Court	http://www.ncwb.uscourts.gov/ecf/ecf.html
● North Dakota Bankruptcy Court	http://www.ndb.uscourts.gov
● Ohio Northern Bankruptcy Court	http://www.ohnb.uscourts.gov
● Ohio Southern Bankruptcy Court	http://www.ohsb.uscourts.gov
● Oklahoma Eastern Bankruptcy Court	http://pacer.okeb.uscourts.gov/ecfhome.html
● Oklahoma Northern Bankruptcy Court	http://www.oknb.uscourts.gov/cmecf/index.htm
● Oregon Bankruptcy Court	http://www.orb.uscourts.gov
● Pennsylvania Eastern Bankruptcy Court	http://www.paeb.uscourts.gov
● Pennsylvania Middle Bankruptcy Court	http://www.pamb.uscourts.gov
● Pennsylvania Western Bankruptcy Court	http://www.pawb.uscourts.gov/cm_ecf.htm
● Rhode Island Bankruptcy Court	http://www.rib.uscourts.gov/cmecf/cmecf2/cmecf2.htm
● South Carolina Bankruptcy Court	http://www.scb.uscourts.gov/cmecf/cmecf.htm
● South Dakota Bankruptcy Court	http://www.sdb.uscourts.gov/CaseInformation/CMECF.htm
● Tennessee Western Bankruptcy Court	http://www.tnwb.uscourts.gov
● Texas Eastern Bankruptcy Court	http://www.txeb.uscourts.gov/cmecf/cmecf.asp?
● Texas Northern Bankruptcy Court	http://www.txnb.uscourts.gov/ecf/
● Texas Southern Bankruptcy Court	http://www.txs.uscourts.gov
● Texas Western Bankruptcy Court	http://www.txwb.uscourts.gov/cmecf/user_training.htm
● Utah Bankruptcy Court	http://www.utb.uscourts.gov/cm_ecf/cmEcfStart.htm
● Vermont Bankruptcy Court	http://www.vtb.uscourts.gov
● Virginia Eastern Bankruptcy	http://www.vaeb.uscourts.gov/ecfnew/ecf.htm
● Washington Eastern Bankruptcy Court	http://www.waeb.uscourts.gov
● Washington Western Bankruptcy Court	http://www2.wawb.uscourts.gov/ccfhome/index.html
● West Virginia Northern Bankruptcy Court	http://www.wvnb.uscourts.gov
● Wisconsin Eastern Bankruptcy Court	http://www.wieb.uscourts.gov/cm_ecf4i/cm_ecf_index.htm
● Wisconsin Western Bankruptcy Court	http://www.wiwb.uscourts.gov/WIWB/cmecfmanual/webhelp/Procedures_Manual.htm

U.S. District Courts

● Alabama Middle District Court	http://www.almd.uscourts.gov/CMECF/ecf_index.htm
● Alabama Southern District Court	http://www.als.uscourts.gov/page.cfm?page=700
● California Northern District Court	https://ecf.cand.uscourts.gov/
● Connecticut District Court	http://www.ctd.uscourts.gov/cmecf/
● District Of Columbia District Court	http://www.dcd.uscourts.gov/ecf.html
● Florida Middle District Court	http://www.flmd.uscourts.gov
● Florida Northern District Court	http://www.flnd.uscourts.gov/attorneys/cmecf/index.cfm
● Georgia Northern District Court	http://www.gand.uscourts.gov/cmecf/cmecfhome.htm
● Illinois Central District Court	http://www.ilcd.uscourts.gov/ecf.htm
● Illinois Southern District Court	http://www.ilsd.uscourts.gov/cm_ecf.html
● Indiana Northern District Court	http://www.innd.uscourts.gov/ecf.shtml

● Indiana Southern District Court	http://www.insd.uscourts.gov/ecf_info.htm
● Iowa Northern District Court	http://www.iand.uscourts.gov
● Kansas District Court	http://www.ksd.uscourts.gov/cmecf/index.php
● Kentucky Eastern District Court	http://www.kyed.uscourts.gov/aty-cmecf/cmecf.html
● Kentucky Western District Court	http://www.kywd.uscourts.gov/CMECFWelcome.php
● Louisiana Western District Court	http://www.lawd.uscourts.gov/atty/ECF/ecf.html
● Maine District Court	http://www.med.uscourts.gov/Site/cmecf/cmecf.htm
● Maryland District Court	http://www.mdd.uscourts.gov
● Massachusetts District Court	http://www.mad.uscourts.gov/NeedPlugin.htm
● Michigan Eastern District Court	http://www.mied.uscourts.gov/ECF/default.cfm
● Michigan Western District Court	https://ecf.miwd.uscourts.gov/
● Minnesota District Court	http://www.mnd.uscourts.gov/cmecf/index.htm
● Missouri Eastern District Court	http://ecf.moed.uscourts.gov
● Missouri Western District Court	http://www.mow.uscourts.gov/cmecf.htm
● Nebraska District Court	http://www.ned.uscourts.gov/cmecf/index.html
● New Hampshire District Court	http://www.nhd.uscourts.gov/pa/pa_index.asp
● New York Eastern District Court	http://www.nyed.uscourts.gov/CM_ECF/cm_ecf.html
● New York Northern District Court	http://www.nynd.uscourts.gov/cmecf/
● New York Southern District Court	http://www.nysd.uscourts.gov/cmecf/cmecfindex.htm
● New York Western District Court	http://www.nywd.uscourts.gov/cmecf/index.php
● Ohio Northern District Court	http://www.ohnd.uscourts.gov/Electronic_Filing/electronic_filing.html
● Ohio Southern District Court	http://www.ohsd.uscourts.gov/cmecf.htm
● Oklahoma Western District Court	http://www.okwd.uscourts.gov/cmecf.htm
● Oregon District Court	http://www.ord.uscourts.gov/ECF/CMECFHomePage.htm
● Pennsylvania Eastern District Court	https://ecf.paed.uscourts.gov/
● Pennsylvania Middle District Court	http://www.pamd.uscourts.gov/ecf.htm
● Puerto Rico District Court	http://www.prd.uscourts.gov/USDCPR/a_cm-ecf.htm
● South Dakota District Court	http://www.sdd.uscourts.gov/sdecf.html
● Tennessee Eastern District Court	http://www.tned.uscourts.gov/cmecf/index.htm
● Texas Eastern District Court	http://www.txed.uscourts.gov
● Texas Northern District Court	http://www.txnd.uscourts.gov/filing/ecf.html
● Texas Southern District Court	http://www.txs.uscourts.gov
● United States Federal Claims Court	http://www.cofc.uscourts.gov/ECF%20Web%20Page/ECF%20page%2002-04%20v2.htm
● Virginia Western District Court	http://www.vawd.uscourts.gov/cmecf/
● Washington Western District Court	http://www.wawd.uscourts.gov/wawd/welcome.nsf/main/page
● West Virginia Southern District Court	http://www.wvsd.uscourts.gov/district/cmecf/index.htm
● Wisconsin Eastern District Court	http://www.wied.uscourts.gov/ECF/ECF.htm

| [Top of Page](#) |

| [CM/ECF Home Page](#) | [PACER Service Center Home Page](#) |

For information or comments, please contact:

The PACER Service Center



Page last updated : 09/07/2004