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CM/ECF: The Southern District's Bankruptcy Cyber-Clerk

By Ann D. Zeigler and Steven D. Shurn

Never set foot in the Southern District of Texas clerk's office again. Ever. Anywhere. (That includes Laredo and McAllen.)

If you practice bankruptcy, that's currently reality. That very reality will be coming soon to our federal district and appellate court operations. The Southern District clerk's office is going cyber, beginning with bankruptcy operations last spring. The very limited Bancap electronic docket access has been replaced by the expansion to this district of web-based CM/ECF (case management/electronic case filing). The new system is as paperless as possible. Here's a brief walk through the new bankruptcy filing system ("ECF").

Draft the document on any computer with Internet access, convert the completed document to an Adobe PDF file, go to the Southern District's website at www.txsb.uscourts.gov, click on "Live Filing," march through the instruction screens and instantly obtain confirmation that the document was filed and electronically served on everyone who has already electronically filed a document in that case. You can then log out of electronic filing and log on to the on-line case docket, pop up your document and read it (and print it, for mail service on those who are not served by e-mail).

If your motion requires emergency or expedited consideration, just deliver a paper courtesy copy to the case manager, who will check to be sure that the electronically filed document is complete, was properly served and has the proposed order attached. The case manager will then give the judge an immediate heads-up. Just remember to distinguish whether you want emergency consideration of your motion or an emergency hearing to put on evidence.

If there is a filing fee for your document, you will receive an instant online invoice, after which you will have 24 hours to deliver a check to the clerk's office.

Once you have electronically filed a document, you will receive via e-mail all documents subsequently filed in that case. This includes proof of claims and documents that would technically be classed as *ex parte* filings (such as motions to limit notice).

If you are anxious to know how a hearing is going in Laredo, just log onto the docket, which is instantly updated as the courtroom deputy types in the courtroom minutes dictated by the judge during the hearing. Or you can wait and get it in a regular electronic "notice" when the hearing is over and the day's minutes are officially posted to the docket by the clerk's office.

The cyber-clerk never closes. If a document is ECF'd by midnight, it is timely filed on that day.

However, if you are not quite ready for technology at that level, you can still deliver a paper original to the intake counter at the clerk's office, receive your file-stamped copy and go on about your business. While you are not looking, the clerk's staff will scan your original document and electronically file it via ECF.

The downside to not using ECF is that you are limited by the clerk's office hours, and while others receive instant service of all documents filed in a case, you will most likely only be served by "snail mail" (regular first-class mail).

Regardless of how you file your bankruptcy documents, the case manager retrieves a specially sorted report each morning listing all motions and applications that have been on file for 20 days and that should go to chambers for consideration. All objections to these motions are electronically linked, so the case manager and judge can tell at a glance if a motion is opposed or unopposed. The morning report also shows new motions that need review, so they can be assigned to the judge's law clerk for procedural and briefing issues.

The other side of the cyber clerk's office houses the voluminous files already on the shelves. This is the "CM" side of the cyber-transition. The dockets of all open pre-ECF cases have been scanned and are accessible on-line. In cases opened since CM/ECF began operations last spring, every document has been scanned as it was received at intake, and there is no physical file.

If you are filing documents in a case that was opened prior to spring 2002, the old part of the paper file will be kept by the clerk's office until the case is closed, but no new paper will be added. The clerk's staff will slowly empty the shelves as pre-ECF cases are closed, and the space will be used for additional electronic processing areas as the clerk's office gets ready for the district and appellate courts to convert to CM/ECF.

At present, only orders in pre-ECF cases are accessible on-line at the court's website. Other pre-ECF documents are listed on the docket but not scanned. So unless you received a document in the mail when it was served, you will have to make a trip to the courthouse to look at the paper file. The paper file will not contain copies of the electronically filed (or paper-filed and electronically scanned) documents.

Is this a slow-motion lay-off of the clerk's staff? Absolutely not, say Clerk Michael Milby and his chief deputy David Bradley. All of the staff is being trained for higher-tech jobs as their low-level filing jobs disappear. The days of shoving carts full of files up and down the halls are waning, and the staff is excited about learning new skills and having higher-level technical responsibilities, Milby said. For example, clerks formerly assigned to paper bankruptcy file movement are now at computers, using special software and split-screen monitors which display the docket and the document being scanned, so clerks can link documents, send hearing notices on paper-filed documents and otherwise manage the electronic files. Several of the clerks who formerly did docketing data entry now are assigned to the ECF help desk, where they field e-mails from lawyers with questions about using the ECF system. Robin Stennis, chief coordinator of the training effort, also coordinates the help desk staff. Of the clerk's 83 staff members, 60 now work in the bankruptcy conversion, as well as assist the remaining staff that is still working "old style" with the district court and appellate files.

At the moment there is still plenty of paper for the clerk's staff to handle. Bradley said that more than 2,000 documents (15-20 tubs) still arrive each day in the mailroom, where they are immediately file-stamped, scanned and gathered in bins to be destroyed -- without ever leaving the mailroom. Extra copies with return envelopes are immediately separated and sent to another area to be returned, to avoid duplicate docketing. And there is still the line at the intake counter, since non-lawyers cannot file electronically. Surprisingly, 25 percent of all filings are deposited in the "night box" outside the intake office. Depending on the daily volume of mail and hand-filings, it can take 24-48 hours for a mailed or hand-filed document to get on the docket.

Bradley said the crowds at the intake counter are getting smaller now, particularly on "foreclosure Tuesdays."

Each individual lawyer who signs up to file via ECF must attend a free three-hour training session at the Federal Building. After the hands-on session with a computer in the training center, the lawyer receives a login/password combination by e-mail and is ready to file. Legal assistants do not receive separate passwords since the use of the password is a part of the lawyer's electronic signature.

Bankruptcy courts in smaller and lower-volume districts throughout the country have been converting, a few at a time, over several years as the CM/ECF system is tested and extended for larger court systems. The Southern District was the first in the country to convert both document access and document filing at the same time, and was the largest to do the conversion. All the courts in the district converted simultaneously, Chief Bankruptcy Judge William Greendyke said. Judge Greendyke described the process of converting an all-paper system to an all-electronic filing and document management system, saying, "We built a wooden boat and paddled to the middle of the pond to find out where it leaks. We just keep paddling back and forth. But each time it's better."

The Office of Judicial Support, headed up by deputy clerk Mark Wells, does a lot of the work between the paddling sessions. The technical support office includes four full-time programmers who coordinate with the national training and development center in San Antonio, developing and testing ways to make the ECF system more efficient for the judges, easier for lawyers and more transparent for any viewers.

Judge Greendyke assures the non-high-tech practitioners that ECF will never be mandatory. No changes will be made to the local rules that could prejudice non-ECF practitioners, but they will be the last ones to get the news regarding their cases.

Plans for the district court's conversion to CM/ECF will be in the works this fall, followed by conversion of the portion of the Court of Appeals which offices in this district.

"Try it, work with it," Judge Greendyke said. "We're all working to improve it all the time. Email your practice suggestions to bkecfquestions@txs.uscourts.gov. or send me a letter."

Ann D. Zeigler and Steven D. Shurn practice with the firm of Hughes, Watters & Askanase, LLP.