



**COMMITTEE ON COURT ADMINISTRATION AND CASE MANAGEMENT
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES**

Audrey G. Fleissig, Chair

Joseph F. Bianco
Nora B. Fischer
Louise W. Flanagan
Marvin P. Isgur
John Z. Lee
Philip R. Martinez
Michael R. Murphy

Robin S. Rosenbaum
Leo Sorokin
Patricia A. Sullivan
Gregory F. Van Tatenhove
Reggie Walton
B. Lynn Winmill

Mark S. Miskovsky, Staff

January 15, 2020

Honorable David G. Campbell
United States District Court
Sandra Day O'Connor United States Courthouse
401 West Washington Street, SPC 58
Phoenix, AZ 85003

Dear Judge Campbell,

Our Committee handles policy issues relating to the current and NextGen of CM/ECF systems. At our meeting last December, we considered a request from Bankruptcy Judge Vincent P. Zurzolo of the Central District of California relating to electronic signatures in CM/ECF. Judge Zurzolo asked whether his court could authorize bankruptcy debtors and those without CM/ECF filing privileges to electronically sign documents filed in bankruptcy cases. As discussed below, our Committee decided that the issue was more appropriate for consideration by the Rules Committee and, accordingly, has referred Judge Zurzolo's request to your Committee.

By way of background, in 2013, this Committee requested that the Rules Committee explore creating a national federal rule regarding electronic signatures and the retention of paper documents containing original signatures to replace the model local rules. The Committee noted that courts' local rules varied in their requirements to retain original paper documents bearing "wet" signatures, and that these varying practices posed problems for attorneys that file in multiple districts. Your Committee considered a proposed amendment to the rule, but ultimately decided not to adopt it, due to concerns raised by the Deputy Attorney General that eliminating

the requirement to retain original signatures would hinder the Department of Justice's ability to successfully prosecute bankruptcy fraud and abuse.

In December, however, our Committee noted that recent amendments to Bankruptcy Rule 5005(a) (effective December 1, 2018) eliminated the language requiring, *inter alia*, that documents signed by electronic means be consistent with the technical standards established by the Judicial Conference. (In the past, this deleted language had been interpreted to prohibit electronic signatures by those without CM/ECF filing privileges because the Judicial Conference had not adopted technical standards for electronic signatures.) Amended Rule 5005(a)(2) now states that an unrepresented individual may file electronically if authorized by court order or local rule, and that “[a] filing made through a person’s electronic-filing account and authorized by that person, together with that person’s name on a signature block, constitutes the person’s signature.”¹ Amended Rule 5005, however, still does not address whether it is permissible to obtain an electronic signature (e.g., via use of electronic signature products, such as DocuSign²) in lieu of a handwritten signature for those without CM/ECF filing privileges. Thus, the amended rule still does not address the issue of the ability of those without CM/ECF filing privileges in bankruptcy cases to electronically sign documents that are submitted to the court.

Based on this history, the CACM Committee agreed that Judge Zurzolo’s request should be considered by the Rules Committee. We believe that courts are hesitant to make such a change without clarification in the rules that use of electronic signature products is sufficient for evidentiary purposes, particularly for petitions, lists, schedules and statements, amendments, pleadings, affidavits, or other documents that must contain original signatures, require verification under Fed. R. Bankr. P. 1008, or require an unsworn declaration under penalty of perjury, pursuant to 28 U.S.C. § 1746.³

Based on these points, the Committee determined that referring this matter to your Committee was appropriate. Thank you for your consideration of this issue. Our two Committees have worked on rules and policy issues related to the implementation of CM/ECF for the past decade, and I look forward to continuing this important work. If you have any questions, please do not hesitate to contact me.

Sincerely,



Audrey G. Fleissig

cc: Mark Miskovsky
Rebecca Womeldorf

¹ When a user registers as a CM/ECF filer, they sign a registration agreement with the court that requires them to agree to certain terms and conditions.

² DocuSign is a product that allows signatures and documents to be uploaded, electronically signed, and encrypted for security. The product contains a number of security features that ensure the validity of electronic signatures.

³ Another issue is whether there should be any minimum security standards in place (e.g., products with an audit trail of all signer actions) for using electronic signature products in lieu of a wet signature.