

NOTES FROM THE COURT

On May 13, 2010, a panel of staff from the Bankruptcy Court of the Southern District of Illinois presented “Notes from the Court” at the BASIL seminar in O’Fallon, Illinois. Following the presentation, there were several requests for a copy of the material presented. The following is a synopsis of the information that was presented.

Submission of Proposed Orders:

- Include all required information in the subject line of the email when submitting a proposed order. This includes the case name, number, and the name of the order (e.g., Order granting Continuance).
- If submitting an Agreed Order or a proposed order from court, this should be indicated in the subject line as well.
- If submitting an Agreed Order, verify the proposed agreed order contains all necessary signatures.
- Proposed orders are to be submitted at the time the motion is filed. The following motions are exceptions and do not require a proposed order to be submitted:
 - Motion for Relief from Stay unless motion includes a request for co-debtor relief or motion is for relief from co-debtor stay, or is agreed or consented to,
 - Motion to Avoid Liens under section 522,
 - Motion to Appear Pro Hac Vice,
 - Motion for 2004 Examination,
 - Motion to Withdraw a pleading or document,
 - Motion to Voluntarily Dismiss an Adversary Proceeding,
 - Motion for Entry of Debtor’s Chapter 13 Discharge.
- If counsel requests that their own proposed order be entered, rather than the court’s form order, that request must either be contained in the prayer of the motion or after the prayer.
- Verify that the proposed order is consistent with the relief sought in the motion.
- Proofread the proposed order prior to submission. Proof for grammar, spelling, punctuation and content.

Emergency Matters:

- Counsel must file the initial emergency pleading and explain why it is an emergency.
- The title of the PDF must reflect “Emergency”. Before accepting docket text, ensure that “Emergency” has been selected from the drop-down menu.
- Counsel should contact the clerk’s office immediately after filing the emergency pleading. The clerk’s office will advise chambers of the filing.
- Do not set the motion for hearing unless you have prior authorization from the court/clerk’s office to do so.

- If it is determined that the matter may be placed on a docket, the attorney will be contacted and directed to issue the notice of the hearing and to file same with a certificate of service.

Motions Requesting Multiple Relief:

- Do not file a motion that seeks multiple types of relief that are not related. Motions may require two different means of noticing, or one type of relief may require an adversarial filing.

Motions to Shorten Time:

- Do not mail and/or file a notice which includes a shortened time period, until the Court has ruled on your motion to shorten time.

Objections to Claims:

- Include the claim number in the objection, especially if the creditor involved has filed multiple claims.
- Make certain that the relief being sought is specified.
- Make clear if the objection is asking that a claim be disallowed completely, or disallowed as secured and allowed as unsecured.

Briefs:

- Make certain that briefs are timely filed and that they contain citations to authority.
- Briefs are to be filed as a separate document, not within the motion.

News Items:

- The Judicial Conference has approved to allow courts, *at the discretion of the presiding judge*, to make digital audio recordings of court hearings available online to the public through PACER for \$2.40 per audio file. The implementation phase will take place possibly later this year in courts across the country.

CM/ECF events:

- A new CM/ECF event for Motions to Retain Tax Refunds has been created. The motion must be filed using the event Motions/Applications > Retain Tax Refunds.
- Please note the event under the motions category titled, Chapter 11 Continuation of Operations. First day chapter 11 motions refer to a variety of pleadings filed with the initial case filing in order to keep the business functioning, to meet payroll, etc. When filing these motions, the specific motion event, if one is available, should be selected. For example, a motion to use cash collateral has a specific event. If there is not a specific event, then the event Chapter 11 Continuation of Operations must be selected in order to fulfill the court's statistical reporting requirement.

Tips:

- A useful feature in CM/ECF is the search feature, which is located on the blue menu bar. This is basically a global search and is very useful when trying to determine the correct event to select when filing your pleading. By clicking on the “search” within the menu bar, a pop-up will appear and you can type in whatever you want to search by. You can type in a portion of a word or an entire word or phrase. CM/ECF will show those items that match the search criteria. Whatever is underlined will be a hyperlink and by clicking on the hyperlink, it will take you right into the event.
- The court has training available on its website for continued use by the public/bar. When hiring new staff, an attorney should have the new staff complete the training which is applicable to the type of work the firm handles. Current staff may also review these electronic learning modules (ELM’s) from time to time as a refresher. These ELM’s can be viewed in your office and at your convenience. The ELM’s are located under the tabs of CM/ECF and then Training.
- Court announcements are posted on the website and CM/ECF start-up page. Any time the court has news, it will most likely be found here. Please make sure that your staff is also aware of the need to review these announcements.

Reminders:

- A Motion to Extend or Continue the Automatic Stay must be filed timely in order to allow for the objection period and a hearing to be held, in the event an objection is filed. The court must be afforded enough time after the objection period to hold the hearing within 30 days of the case filing.
- The procedure for obtaining an extension of time to file schedules in small business chapter 11 cases is treated differently under the Bankruptcy Rules and Code. Also, there are specific requirements under 11 U.S.C § 1121(e) as to the time to obtain plan confirmation.
- Due to the implementation of BAPCPA, there are many statistical reporting requirements for the court. It is very important to use the correct event, to ensure the appropriate selections are made from drop-down menus, and correct information is entered into text boxes that are within the events. As an example, the Amended Chapter 13 Plan event prompts the filer to select if this is being filed before or after confirmation. The correct selection must be made so that statistical reporting is accurate. Another common example is when a party is filing a motion for relief from stay and abandonment. Filers must use the control key to select both relief from stay and abandonment so that inaccurate reporting does not occur.
- Some of the requirements for filing a motion for relief from stay include having a separate notice, complete certificate of service and a correct objection and preliminary hearing date. In the event the notice contains a preliminary hearing date which is more than 30 days from the date of filing the motion, the motion and notice must contain a statement that the filer is waiving their right to a hearing within 30 days. Please see the Federal Rules of Bankruptcy Procedure, Local Rules and refer to the Administrative Guide for Attorneys for further information and requirements for motions for relief

from stay. The Local Rules and Administrative Guide are located under the Operational Guide/Rules tab on the court's website.

- When amending the debtor's Statement of Social Security Number, the certificate of service must reflect that all parties were served by mail, which includes the Trustee and U.S. Trustee. Although parties receive the NEF, no one actually receives the PDF of the statement electronically due to the privacy rules.
- After filing an amended schedule to add additional creditors, be sure to upload the additional creditors into CM/ECF.
- When filing the debtor's certification of completion of the personal financial management requirement, be certain to use Official Form B423. Official Form B423 is required rather than the agency's certificate.
- When entering a party filer, the filer must adhere to the court's Style Guide for Electronic Case Filing. It is very important that parties are entered correctly into CM/ECF, without all the additional assignee, successor to, etc., being entered. When parties are entered correctly, it results in speedier filings as there are not as many parties to sort through. The Style Guide is located on the court's website under the CM/ECF Training tab.
- It is a violation for one attorney to use another attorney's login.
- Prior to filing, ensure that the PDF is legible, complete, and in the correct order. During the filing process, ensure that the correct PDF is attached and the filing is being made in the correct case.