



United States Bankruptcy Court  
Eastern District of Wisconsin

Chambers of  
G. Michael Huffenger  
U.S. Bankruptcy Judge

517 E. Wisconsin Avenue  
Milwaukee, Wisconsin  
53202-4581

March 27, 2020

VIA EMAIL

David W. Asbach  
Assistant United States Trustee  
Office of The United States Trustee  
517 East Wisconsin Avenue  
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Milwaukee, WI 53202

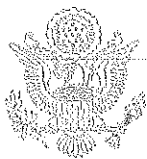
**Re: Open letter regarding proposal to issue general order waiving wet-signature requirement during the COVID-19 emergency**

Dear Mr. Asbach:

You proposed in a March 18, 2020 email that the court issue a general order like one recently issued by the N.D. Georgia Bankruptcy Court that authorizes counsel to file debtor-signed documents electronically without having the original document in the filer's possession. The bankruptcy judges conclude that no similar order is necessary because no rule in this District requires counsel to have the debtor's wet-ink signatures in hand before filing, although by filing the petition and other verified documents on the debtor's behalf counsel represents that the debtor has signed those documents.

Bankruptcy Rule 1008 states, "[a]ll petitions, lists, schedules, statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746." Section 1746 states,

Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same . . . , such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person



**which is subscribed by him**, as true under penalty of perjury, and dated, in substantially the following form[.]

28 U.S.C. §1746 (emphasis added). Whether the statute's reference to "in writing of such person which is subscribed by him" requires a wet-ink signature or might be satisfied by electronic means having similar solemnity as putting ink to paper is a potentially open question beyond the scope of this response. This response presumes that Bankruptcy Rule 1008 requires wet-ink signatures on petitions, lists, schedules, and statements filed by debtors.

Local Rule 1008 governs the electronic filing by counsel of petitions, lists, schedules and statements in this District. It provides,

The user login and password required to submit documents to the CM/ECF System constitute the registered user's signature on electronic documents filed using that system. By filing a petition, schedule, statement, amendment, stipulation or other verified document containing a signature of a person other than the registered user, **the registered user represents that person, in fact, signed the document.** "S/\_\_\_" or a similar notation constitutes a signature for purposes of this Local Rule.

Bankr. E.D. Wis. L.R. 1008 (emphasis added). While Local Rule 1008 requires debtor's counsel to represent that the debtor has signed the Rule 1008 documents filed electronically, that local rule does not require counsel to have the debtor's original signature in hand before filing.

Nor do any of the other local rules in this District require counsel's possession of the original before filing. Local Rule 5005.1(a) requires counsel to retain the original document and provide it upon request; Local Rule 5005.1(b) allows counsel to store electronic copies of original documents by complying with the rule's verification requirement. Neither rule, however, requires counsel to possess the original document before filing the document electronically.

In this way the local rules in this District differ materially from the local bankruptcy rules in the N.D. Georgia. That court's local rules provide, "The electronic filing of the document constitutes a representation and certification by the person filing the document . . . that **at the time of filing**, the person filing the document electronically is **in possession of an original document signed as indicated** on the electronically filed document." Bankr. N.D. Ga. L.R. 5005-7(b)(3) (emphasis added); see also *id.* 5005-7(c)(1)



("Verified Papers. (1) A person electronically filing a Verified Paper **certifies that such filer has in such filer's possession at the time of filing the fully executed original Verified Paper** with an original signature of each person whose signature is indicated thereon." (Emphasis added.)).

Our Local Rule 1002.1 requires presentment of the original signed Rule 1008 documents at the meeting of creditors: "Debtors who file electronically must bring to the 11 U.S.C. § 341 meeting of creditors signed originals of their petition, schedules and Statement of Financial Affairs, including any amendments, and furnish those originals to the trustee upon request." Bankr. E.D. Wis. L.R. 1002.1. But nothing in our local rules of which the judges are aware requires counsel to have original signed Rule 1008 documents in hand before filing electronically. Counsel must only be able to represent at the time of filing that the debtor has in fact signed these documents. The types of evidence to which the Northern District of Georgia Bankruptcy Court's temporary rule and your email refer—a photo or image of the original signature sent to counsel by text, email, or facsimile—may in many (if not all) instances provide counsel with a sound basis for filing the documents electronically, thereby representing that the debtor has signed the filed documents.

My colleagues and I thank you for raising this issue. During ordinary times—when debtors typically meet in person with counsel to review the petition and schedules before signing and filing—there is little doubt that having wet-ink signatures in hand before filing is the best practice. As a result, some counsel may be operating under the presumption that the imperative to possess the original document before filing comes from a rule, rather than an exercise of practical good judgment under ordinary circumstances. The court will post this letter on its website to clarify this point for the bar.

In closing, I invite the United States trustee and all members of the bankruptcy bar to make additional suggestions for rules, general orders, or practices that might serve to better the just and efficient administration of this District's bankruptcy cases during the ongoing COVID-19 health emergency and after that emergency passes.

Yours very truly,

  
G. Michael Halfenger  
Chief Bankruptcy Judge