

Clerk Commentary

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The Evolving Requirements Regarding Software-Generated e-Signatures for Nonattorneys

One of the most transformative technological changes to bankruptcy practice occurred in the early 2000s with the federal courts' adoption of the case-management and electronic case filing system (CM/ECF). With electronic filing, attorneys gained the ability to file documents and access court dockets in real time over the internet rather than in paper at the clerk's office. However, the emergence of electronic filing raised concerns surrounding the integrity and veracity of electronically filed documents. With respect to signatures of nonattorneys, this concern is ongoing and continues to evolve as digital signature technology becomes more mainstream.

Obvious advantages of software-generated electronic signatures include convenience and efficiency, yet these benefits must be balanced with maintaining the authenticity of documents signed by nonattorneys in bankruptcy cases. The proliferation of digital signature software, especially since the COVID-19 pandemic in 2020, is impacting the legal industry and beginning to affect bankruptcy court procedures in the form of local rules and general orders.

Rule 1008 of the Federal Rules of Bankruptcy Procedure requires that "[a] petition, list, schedule, statement, and any amendment must be verified or must contain an unsworn declaration under 28 U.S.C. § 1746."¹ In turn, 28 U.S.C. § 1746 allows unsworn declarations in lieu of sworn affidavits, as long as the unsworn declaration is signed, dated and declared true under penalty of perjury.² Notably, the statute states that unsworn declarations must be "in writing of such person which is subscribed by him."³

Under Bankruptcy Rule 9011(b), the filing of a pleading acts as a certification that the document has been reviewed by the party, there is some factual support for the positions asserted, and the document has not been presented for an improper purpose. Rule 9011, when considered alongside Rule 1008, "specifically prohibits attorneys from signing a debtor's name to the lists, schedules and statement of financial affairs."⁴

In the digital age, what constitutes an original signature and whether software-generated digital signatures should qualify is the subject of debate among bankruptcy courts and practitioners alike. Those in favor of the widespread adoption of software-generated digital signatures for nonattorneys on bankruptcy documents cite its convenience, efficiency and security safeguards.⁵ Other considerations include increased access to the justice benefits of software-generated digital signatures for underserved communities and those who live or work in rural areas.⁶ Those in opposition maintain that "wet ink" signatures serve an important function in preventing and aiding in the prosecution of bankruptcy fraud.⁷

This debate is reflected in decisions that examine a filing attorney's conduct with respect to obtaining and retaining debtor signatures on the petition and other required bankruptcy documents. In 2016, the U.S. Bankruptcy Court for the Eastern District of California in *In re Mayfield* sanctioned an attorney who had filed the petition and related documents signed by his clients using DocuSign in contravention of the court's local rule, which required wet-ink original signatures.⁸ The Court found the argument of the U.S. Trustee's Office persuasive and concluded that "an individual's handwritten signature is less easily forged than any form of software-generated electronic signature, and the presence of forgery is more easily detected and proven."⁹

Further, the court stated that "[t]he convenience of the debtor and the debtor's attorney pales when put up against the need to protect the integrity of the



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1 Fed. R. Bankr. P. 1008.

2 28 U.S.C. § 1746.

3 *Id.*

4 *In re Whitehill*, 514 B.R. 687, 691 (Bankr. M.D. Fla. 2014) (quoting *In re Wenk*, 296 B.R. 719, 727 (Bankr. E.D. Va. 2002)).

5 Samuel J. Turco, Jr. & Donald L. Swanson, "Debtors Sign Tax Returns Digitally: Why Not Petitions and Schedules?," XXXIX *ABI Journal* 1, 54-55, 74-75, January 2020, abi.org/abi-journal/debtors-sign-tax-returns-digitally-why-not-petitions-and-schedules; Patricia Redmond & Ashley D. Champion, "Getting Debtors Back to the Future: The Case for Abolishing the 'Wet Ink' Signature Requirement," XXXVIII *ABI Journal* 10, 22-23, 73-74, October 2019, abi.org/abi-journal/getting-debtors-back-to-the-future-the-case-for-abolishing-the-wet-ink-signature (unless otherwise specified, all links in this article were last visited on March 25, 2026).

6 Sam Turco, "Digital Signatures in Bankruptcy Cases," *Nebraska Debt & Bankr. Blog* (March 23, 2026), nebraskadebtbankruptcyblog.com/2016/07/digital-signatures-in-bankruptcy-cases. Cf., Edward Lanquist, "How Artificial Intelligence Can Be Used to Provide Legal Services to the Underserved," 61 *Tenn. B.J.* 3 (May/June 2025).

7 Molly T. Johnson, "Bankruptcy Court Rules and Procedures Regarding Electronic Signatures of Persons Other than Filing Attorneys," Fed. Judicial Ctr. (2013) ("Informal feedback from the Executive Office of the U.S. Attorneys indicated that hard-copy signatures are thought to serve an important evidentiary function, particularly in jury trials, in prosecutions for fraud or related crimes.").

8 No. 16-22134-D-7, 2016 WL 3958982 (Bankr. E.D. Cal. July 15, 2016).

9 *Id.* at *2.

documents filed in bankruptcy cases,” and “documents with the significant legal effects of a bankruptcy petition and related documents, especially documents signed under the penalty of perjury, must ... be signed in ink.”¹⁰ The court sanctioned the attorney for violating the local rule that required debtors to sign documents manually and required the attorney to retain those documents for further inspection if necessary.¹¹

Another decision containing notable commentary on the issue is *In re Klitsch*.¹² In *Klitsch*, the U.S. Bankruptcy Court for the Middle District of Pennsylvania noted that “in the absence of some specific requirement in the statute or the rules, whatever merit the argument that wet ink signatures are a necessity, dissipates as the electronic age takes over our day-to-day lives,” and “if validity depended on the ‘wetness’ of one’s signature, few of my Orders would be enforceable.”¹³ The court further stated that “[w]hether that signature must be by ‘pen to paper’ in an era when wet signatures are the exception rather than the rule is problematic.”¹⁴ As the Court observed, the key issue was not whether the Middle District of Pennsylvania required the debtor to sign the petition with a wet-ink signature, it was whether the attorney had complied with Bankruptcy Rules 1008 and 9011 when he affixed and filed the petition-related documents with his clients’ “/s/” designation without any signature of his clients prior to filing.¹⁵ Ultimately, because the attorney admitted that the petition and related documents had not been signed in any form by the debtors prior to filing, the court ruled that the attorney violated Bankruptcy Rule 9011 and issued sanctions.

While many bankruptcy courts had previously required original signatures of nonattorneys in “wet ink” to be retained in hard-copy format by filing attorneys,¹⁶ some bankruptcy courts have begun to incorporate procedures and policies related to software-generated electronic signatures in local rules and standing orders. The local rules in the Central District of California, District of Nebraska, District of South Carolina, Eastern District of Virginia and District of Utah are noteworthy examples.

In 2018, the U.S. Bankruptcy Court for the District of Nebraska amended its Local Rules to permit software-generated electronic signatures as original signatures for debtors.¹⁷ In its current form, Local Rule 9011-1(A) defines “authorized signature methods” on a document to include a “digital signature from a software program that creates a secure electronic signature uniquely identifying the signer, which ensures the authenticity of the signature, and ensures the signed document has not been altered or repudiated, including DocuSign, Adobe Sign, and SignEasy.”¹⁸ For attorneys

that file documents containing an “/s/ signature” for non-attorneys, the attorney “represents under penalty of perjury [that] he or she has custody of the document with the signing party’s signature.”¹⁹

In 2021, the U.S. Bankruptcy Court for the District of South Carolina amended Local Rule 9011-4 to “adopt electronic signatures for parties.”²⁰ The rule provides that “[i]n lieu of the original signature, an authorized CM/ECF Participant may file a document containing a scanned copy of the original signature, a digital signature via any commercially available signature software that provides signature authentication, or an electronic signature.”²¹ When the CM/ECF user files the document, it serves as a certification that the filer obtained “express documented permission from the signer to affix” the signature and file the document.²²

As explained in *In re Washington*, “[a]ttorneys have complied with the rule in various ways, including by obtaining a ‘wet’ signature or a digital signature using electronic document signing programs or, alternatively, by email communication expressly evidencing a client’s consent to have the client’s signature affixed to the particular document after it has been provided for review.”²³ Attorneys must retain “sufficient evidence of the signer’s permission to sign a particular document and the document’s contents” for a specified period of time.²⁴

In 2023, the U.S. Bankruptcy Court for the Eastern District of Virginia amended Local Rule 5005-1 to “expand the definition of the term ‘original signature’ to include the forms of signature ... such that its meaning is not confined to a wet signature only.”²⁵ Local Rule 5005-1(F)(1) requires original signatures for “any paper that must be verified or contain an unsworn declaration” per 28 U.S.C. § 1746, and “any declaration, affidavit, other paper in which the signatory verifies, certifies, affirms, or swears under oath or penalty of perjury the truth of the matters set forth in that paper.”²⁶ In turn, Local Rule 5005-1(F)(2) authorizes as an original signature “a digital signature generated via a commercially available software product that uses encryption and/or multi-factor authentication to create a secure electronic signature that uniquely identifies the signer and ensures that the signature is authentic and has not been altered or repudiated.”²⁷

In 2024, the U.S. Bankruptcy Court for the District of Utah amended Local Rule 5005-2 to authorize the use of “validated digital signatures” generated via a commercially available software product.²⁸ The commercially available software product must use “encryption and/or multi-factor authentication to create a secure electronic signature that uniquely identifies the signer and ensures that the signature is authentic and has not been altered or repudiated.”²⁹ The rule notes that

¹⁰ *Id.* at *3.

¹¹ *Id.* The U.S. Bankruptcy Court for the Eastern District of California revisited its relevant local rule on signatures in 2023 and reiterated that the district has “always required affiants to execute sworn testimony by a manually created, wet signature.” *Cabardo v. Patacsil (In re Patacsil)*, No. 20-23457-A-7, 2023 WL 5507229 (Bankr. E.D. Cal. Feb. 28, 2023).

¹² 587 B.R. 287 (Bankr. M.D. Pa. 2018), *opinion corrected*, No. 5-17-BK-01298-JJT, 2018 WL 5733715 (Bankr. M.D. Pa. Oct. 31, 2018).

¹³ *Id.* at 293.

¹⁴ *Id.*

¹⁵ *Id.* at 292-93.

¹⁶ Molly T. Johnson, “Bankruptcy Court Rules and Procedures Regarding Electronic Signatures of Persons Other than Filing Attorneys,” Fed. Judicial Ctr. (2013) (at time of report, “[t]he vast majority of bankruptcy courts (85/93, or over 91 percent) require the filing attorney to retain hard copy documents bearing non-registrants’ signatures”).

¹⁷ Neb. R. Bankr. P. 9011-1.

¹⁸ Neb. R. Bankr. P. 9011-1(A).

¹⁹ Neb. R. Bankr. P. 9011-1(B).

²⁰ Bankr. D.S.C.R. 9011-4 (Notes).

²¹ Bankr. D.S.C.R. 9011-4(a)(1).

²² *Id.*

²³ 663 B.R. 685, 693 (Bankr. D.S.C. 2024).

²⁴ Bankr. D.S.C.R. 9011-4(a)(2).

²⁵ Bankr. E.D. Va. LBR 5005-1 (Comments).

²⁶ Bankr. E.D. Va. LBR 5005-1(F)(1)(a)-(b).

²⁷ Bankr. E.D. Va. LBR 5005-1(F)(2)(c).

²⁸ Bankr. D. Utah LBR 5005-2(f)(3).

²⁹ Bankr. D. Utah LBR 5005-2(f)(3)(A).

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such commercially available software products include, but are not limited to, DocuSign, Adobe Sign and SignEasy.³⁰ Pursuant to Local Rule 5005-2(e), “[d]ocuments that are electronically filed and require original signatures other than that of the ECF Filer must be maintained in paper form by the ECF Filer until one year after the case is closed.”³¹

Correspondingly, the U.S. Bankruptcy Court for the District of Utah amended Local Rule 9011-3 to provide that an attorney (or other person) that files on the court’s docket or presents to the court a document containing a signature (whether it is a holographic signature or a validated digital signature permitted by Local Rule 5005-2(f)(3)(A)) is certifying, to the best of the person’s knowledge, information and belief formed after an inquiry reasonable under the circumstances, that the signature is authentic and that the document was and is, in fact, subscribed by the person(s) whose signature appears thereon.³²

Also in 2024, the U.S. Bankruptcy Court for the Central District of California amended Local Rule 9011-1 to provide detailed procedures on the types of signatures, including software-generated signatures, that are permitted on documents filed with the court. Local Rule 9011-1(b)(4) defines a “software-generated signature” as a “graphical signature created by software (*e.g.*, DocuSign).”³³ The rule specifies what constitute “robust safeguards” for the software itself, including authentication requirements, encryption, secure storage, audit trail, and an option for the signer to download the

signed document.³⁴ Furthermore, Local Rule 9011-1(b)(4)(B) requires that the attorney who files the document containing a software-generated signature must file a declaration of oral verification stating that the attorney received the signer’s oral verification before filing.³⁵ Under Local Rule 9011-1(d), the signer of the document must later sign the document with wet ink and provide the signed copy to the attorney, which the attorney must retain for five years.³⁶

Conclusion

As digital-signature software continues to develop and gain popularity, it will inevitably continue to impact bankruptcy court procedures and rules related to its permissible use. At the present time, as has been since the adoption of electronic filing, the regulation of digital signatures of nonattorneys in bankruptcy cases is left to the discretion of individual bankruptcy courts. The examples highlighted in this article illustrate how local rules and practice regarding the digital signatures of nonattorneys vary.

Consequently, to ensure compliance, attorneys must remain alert to the specific signature and retention requirements of the districts in which they practice. Members of the bankruptcy bar that are interested in shaping procedures surrounding software-generated electronic signatures might consider participating in, or providing suggestions to, the rules or practice committee(s) at their respective local bankruptcy courts. **abi**

³⁰*Id.*

³¹ Bankr. D. Utah LBR 5005-2(e).

³² Bankr. D. Utah LBR 9011-3.

³³ Bankr. C.D. Cal. LBR 9011-1(b)(4).

³⁴ Bankr. C.D. Cal. LBR 9011-1(b)(4)(A).

³⁵ Bankr. C.D. Cal. LBR 9011-1(b)(4)(B).

³⁶ Bankr. C.D. Cal. LBR 9011-1(d).