

## JUDGE MICHAEL'S POLICY REGARDING PRESERVATION AND RETENTION OF ORIGINAL PLEADINGS

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While the advent of electronic filing has made some aspects of law practice more streamlined and efficient, it has not eliminated the basic duties of counsel with respect to the preservation and retention of paper documents under their control. This Court has local rules that govern how (and how long) an attorney or party must preserve and retain filed pleadings or documents in their original (i.e., paper) form. The basic idea behind the rules is that once a document has been filed with the Court, the original (the so-called “wet-ink” copy) will be preserved—in its original form and without alteration—and retained until such time as any controversy regarding its authenticity is likely dead and gone. The operative rule implementing this goal is Bankr. N.D. Okla. LR 9011-1, which reads,

### RULE 9011-1. ATTORNEYS – DUTIES

Petitions, lists, schedules, statements, amendments, pleadings, affidavits, motions, and other documents which must contain original signatures or which require verification under Bankruptcy Rule 1008 or an unsworn declaration, as provided in 28 U.S.C. § 1746, shall be filed electronically. **The attorney of record or the party originating the document shall maintain documents with original signatures filed in a bankruptcy case for at least one year after the case is closed.** In adversary proceedings, the attorney of record or party originating the document shall maintain documents with original signatures filed in the proceeding until after the proceeding is concluded and all time periods for appeals have expired. Upon request, the original document shall be provided to other parties or the Court for review. (emphasis added)

In addition, the administrative procedures of this Court require that “[t]he CM/ECF User that files such a document [one containing the signature of any person other than the filing attorney] shall maintain a paper version of the signed document in accordance with Local Rule 9011-1.”<sup>1</sup> This means: regardless of whether the filed pleading includes a scanned image of a physical signature or utilizes the “s/” procedure allowed by Bankr. N.D. Okla. LR 9011-4, the filer must maintain a wet-ink original of the signatures of each signing party.

The purpose of the rule seems plain enough: in a world where wet-ink copies are no longer submitted to the Court, there must be a way to verify the integrity of a particular pleading or document if its authenticity or veracity is questioned. Once a document has been filed, it becomes immutable—it must be preserved in its original form, without alteration. The party filing the document becomes the custodian of the original copy, and must be prepared to present it to the Court or to any party that has reason to question its veracity.

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<sup>1</sup> See CM/ECF Administrative Guide of Policies & Procedures, § XI (B & C).

## Special cases:

### 1. *Pleadings generated by bankruptcy software*

A disturbing trend has emerged whereby counsel seem unable to produce a signed “wet-ink” copy of a debtor’s original petition or verifications of statements and schedules. It appears that counsel will sit with their client at a computer and they will “review” the petition and schedules together prior to filing. Instead of printing the documents and getting a wet-ink signature that can be preserved for posterity, counsel merely gets a verbal “assent” from the client that everything in the document is true and correct under penalty of perjury, and then slaps an “s/ Joe Client” signature on the pleading. That practice is simply unacceptable. Not only does it violate Rule 1008 and this Court’s Local Rules regarding signatures and pleading retention, it puts counsel in a precarious position when a client decides to back-pedal from something in the document.

### 2. *Amended pleadings*

Parties should be especially vigilant regarding maintenance of documents when a pleading that contains an original signature or verification must be “amended.” The filing of an amended document does not eliminate the requirement to maintain the first document in its original form. You may not alter (i.e., “amend”) the original. In order to file an amended document, you must obtain fresh “wet-ink” signatures from all parties. Once an amended document is filed, it becomes a second document that must also be retained by the filer in its original form.

### 3. *Reaffirmation agreements*

The Court has encountered numerous problems with the failure of counsel to preserve and retain filed reaffirmation agreements in their original “wet-ink” form. The problem often begins when a reaffirmation agreement is filed that does not contain all of the information required by 11 U.S.C. § 524(c) and (k).<sup>2</sup> If you receive a notice of deficiency (or, worse yet, an order finding the agreement not effective), DO NOT attempt to “fix” the problem by simply altering the original document to add the required information—without acquiring updated signatures from the necessary parties—and then re-file it as an “amended agreement.” In addition to the obvious problems related to adding information to a previously executed document, this practice violates Bankr. N.D. Okla. LR 9011-1 because the original document has not been preserved and can no longer be presented to the Court

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<sup>2</sup> Unless the creditor is a credit union, if a debtor does not complete, sign, and date Part D (Official Form B 240A/B ALT) or Part II (C) (Official Form B 240A) of the reaffirmation agreement, which addresses the debtor’s current monthly income, expenses, and ability to make the reaffirmed payment, the agreement is not effective. Failure to provide this information will generate a notice of the deficiency and an opportunity to amend the agreement. The Court notes that providing the same information on the Reaffirmation Agreement Cover Sheet (Official Form B27) is also required, but will not serve as a substitute for providing the information on the reaffirmation agreement itself. *See* 11 U.S.C. 524(k)(6)(A) (“The statement in support of such agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following . . .”).

in its unaltered form. Depending on the nature of the deficiency, you MAY need to start over from scratch.

The Court cannot overstate the importance of Local Rule 9011-1. In order for our electronic filing system to function, all parties involved must be able to rely on the integrity of every pleading filed with the Court. In the olden days, you would not have thought it permissible or proper to alter paper documents once they were placed in the Court file. The same rule applies today. The only difference is that you, the attorney, are now the custodian of the original document.