

**NBA BANKRUPTCY COMMITTEE
LOCAL RULES SUBCOMMITTEE
COURTROOM/TRIAL SUBCOMMITTEE**

(Status: January 26, 2004)

- A. What technology will be in the courtroom? This includes the following questions:
1. How will the judge view documents in the courtroom?
 2. How will the attorneys see the electronic documents?
 3. Will hookups to the system be available for attorneys to use in the courtroom?

Subcommittee Recommendation:

Introduction

We recommend that the courtrooms¹, including the bench, counsel tables and the witness stand, be equipped with adequate hardware and software to hear weekly dockets and conduct contested evidentiary hearings in a completely electronic format. There may be reasons why a particular matter would not be conducted in a completely electronic format (*e.g.*, a judge's preference, a *pro se* litigant, etc...), but we believe that each courtroom must have the capability to operate without paper.

We recommend that the courtrooms be equipped with computers that directly access CM/ECF. We also recommend that the courtrooms be turned into wireless hotspots that would allow lawyers to access the internet from laptops.

Direct Access to CM/ECF

We have discussed many options of how to accomplish an effective, fully electronic courtroom. From the start, we have been drawn to using a wireless network in order to allow many lawyers to be operating electronically at the same time. However, there are apparently security risks whenever outside computers are interfacing directly with courthouse computers. In order to address these concerns, we have formulated a two technology approach that will allow free direct access to CM/ECF from permanent computers in the courtroom, also provide a wireless hotspot.

For the direct access to CM/ECF, the bench and courtroom deputies would have computers that could access CM/ECF. In addition to this, at each counsel table, there would be one or two computers permanently on the tables. These computers would have limited functionality – they would connect to CM/ECF using a public identification and password (so that there are no charges to users in the courtroom), they would have Adobe Acrobat and they

¹ In these recommendations, the term "courtroom" includes the 341 Meeting Room.

would have a CD-ROM drive. In addition to these computers, there would be a monitor at the witness stand.²

For the 341 Meeting Room, we recommend having monitors that access CM/ECF for the trustee, for the trustee's assistant, for the debtor, and also having one or two for creditors.

With this arrangement, judges would be able to look at whatever they wanted on their computers. Lawyers would also be able to access CM/ECF from the counsel tables. In addition to this, we envision that lawyers could bring a CD to court that contains whatever documents they want to use in a PDF format. Before using the CD in the courtroom, the lawyer would have it scanned for viruses by the courtroom deputy or the Clerk's Office. We are told this would be a very quick process. Once the CD was confirmed to be clear of viruses, then it could be used in the computers in the courtroom. In this way, lawyers would have full access to CM/ECF and everything they brought with them on a CD, and it would happen in a way that is believed by the Clerk's Office to be reasonably safe from viruses.

In addition to this, we have discussed the possibility of obtaining visual presenter systems for the courtrooms. Only a few of us were aware of this technology, but it allows everyone in the courtroom to view the same thing on their computer screens. It also allows documents being displayed to be manipulated. So, if a witness were marking a document, everyone could see it at the same time. Such a system could also take "snapshots" of a document and allow it to be immediately stored electronically.³ This seems like technology that we should have. We were advised that budget constraints might limit this technology to one courtroom for the near future. We strongly believe that obtaining at least one visual presenter would be invaluable in conducting lengthy evidentiary hearings electronically.

Wireless Hotspot

In addition to the permanent computers with direct access to CM/ECF, we recommend creating wireless hotspots in the courtrooms. This would provide access to the internet in a manner that is completely independent from the court's computer systems. Thus, it would not be a threat to the court's networks.

We understand that this would require a wireless router or routers in the courthouse and a T1 line. This should be fairly inexpensive – we are guessing that the initial hardware cost may be approximately \$_____ and the T1 line should be less than \$300 per month. Outfitting Columbia and Cookeville will require replicating this structure in these locations. Our committee is still discussing options for how to best implement this recommendation. We need to learn more about the U.S. Trustee's obligations to furnish the 341 Meeting Room. We also need to further explore the role that the bar association might play in providing the internet access.⁴

² We are aware that at least one court in Nebraska employs a set-up like this. We intend to contact lawyers in that District to discuss with them how they feel about the way dockets and hearings work with this arrangement.

³ If you run a Google search for "visual presenter courtroom", you will get hits from the websites of various courts around the country using this technology.

⁴ Specifically, we understand that, when Hank Hildebrand is in the 341 Meeting Room and wants to access the internet, his computer in the courthouse connects him to his office, which in turn allows him to get to the internet. We are recommending the wireless analog of this, which means we need a computer somewhere – perhaps at the bar association – to which the wireless routers in the courthouse are connected in order to provide internet access.

We believe that this two technology arrangement will allow the courthouse to provide free CM/ECF access in every courtroom to a limited number of users on the permanent desktop computers, will protect the judiciary's computers, and allow a large number of users to simultaneously access the internet (to access PACER for a fee, or contact their offices, or research an issue, etc...). In this way, at the technology low end, there will always be a way to look up a pleading for free. And, at the high end, the courtrooms will be virtual offices.

Wireless Implementation

In order to determine whether there are any practical impediments to implementing the wireless solution, the Clerk's Office has generated two reports identifying issues that might cause problems in creating a wireless hotspot. After reviewing the reports, it appears that the wireless hotspot is technically feasible. The main issue to resolve relates to funding. It is possible that the start up costs come from the bar. We understand that it is feasible to use a password on a wireless system so that, if we need to turn to subscription funding, we can.

Regarding cost, Curtis McMahon from the Ch. 13 Trustee's Office has worked on determining the price of the wireless system we are contemplating. The Clerk's Office has priced it out as well and has a higher view of the cost.

B. Hearing Logistics.

1. How will exhibits be handled? (When they are submitted electronically)
2. How will items that cannot be placed on the system electronically be handled in court?

Subcommittee Recommendation: We recommend that, while the local rules and practice should be formulated to encourage fully electronic dockets and hearings, the local rules and practice should also accommodate parties being able to use paper in the courtroom. We have discussed multiple situations where using non-electronic items seems unavoidable – for example, for *pro se* litigants, in contested hearings where there are lengthy contracts with several relevant provisions, and situations where there are exhibits that are oversize or not made of paper.

Regarding the use of paper pleadings or exhibits in the courtroom, it seems like these situations should fall generally into two categories – those where the pleading or exhibit has already been filed electronically, and those where it has not already been filed electronically. In situations where a document has already been filed electronically, and a litigant has brought paper copies to court for the convenience of the court, the parties or a witness, this should be readily allowed. In situations where a document has not been filed electronically prior to its use in the courtroom, we recommend that the courtroom deputies or the Clerk's Office be responsible for scanning any exhibits after the hearing is over.⁵

⁵ We have discussed whether it is too large an administrative burden to have courtroom deputies or the Clerk's Office scan documents that are used at a hearing without having first been filed electronically. The consensus of the group so far has been that there would be serious logistical issues inherent in disallowing paper exhibits, and that it would not be tenable to have lawyers take paper exhibits with them after a hearing and get them scanned. This seems to leave having courtroom deputies or the Clerk's Office do the scanning as the best way to get paper that is presented at a hearing into an electronic format. (Of course, to the extent that there is a visual presenter in the

Regarding the use of oversize exhibits or those that are not made of paper, we understand that this is an issue for which the Clerk's Office is prepared. Compared to District Courts that hear criminal cases where there are often many tangible items admitted into evidence, it is expected that our court will not have many such exhibits. Any such exhibits will be kept by the Clerk's Office in the same manner that they are kept now. When there is an exhibit that is oversized or a tangible object, we recommend that the CM/ECF system reflect something like "Exhibit ___ is on file and may be reviewed in the Clerk's Office."

In addition to these issues, we recommend that the system in the courtrooms must allow lawyers to control the presentation of the exhibits in a simple manner from the podium so examinations can flow. We probably need for lawyers to be able to bring up the exhibit they want to use on their own monitor before it becomes available to other parties in the courtroom. Attorneys will also need adequate space at the podium for them to be able to use the visual presenter system, have a laptop, and have a place to put written examination notes.

C. Other Issues.

1. How will technical failures be handled?

Subcommittee Recommendation: With respect to technical failures, we are of the view that, if the court system for presenting electronic evidence fails, it would be grounds for a continuance unless the parties knew far enough in advance to deal with the problem. The wireless system was viewed as a convenience for the bar and if it fails, lawyers should be responsible for whatever backup they needed. The CD system would allow a backup that could be used with the presenter and allow hearings to go forward. In any event, the Court always has discretion to continue hearings if the failure is fundamental and prejudices parties rights.

2. Will transcripts be filed electronically?

Subcommittee Recommendation: We have requested that the Court make unofficial transcripts of hearings and 341's available on a website for a month after the hearings. These would be available to assist in preparation of orders and to help parties recall what transpired at a hearing. If someone needed an official transcript, it would need to be paid for and ordered in the same manner as the Court presently handles this issue. Since the U.S. Trustee is responsible for the 341 hearings, whether this can be accomplished given their budget and constraints is not known.

3. Will all courtrooms have the same technology?

Subcommittee Recommendation: The preference of the subcommittee is that, yes, all of the courtrooms should have the same technology. However, we understand that there may be budget issues that may interfere with this (*e.g.*, it may not be possible to have visual presenters in each courtroom). We are trying to learn more about this issue. We are also investigating what impediments to standardization may exist in Columbia and Cookeville.

courtroom, that system may be used to quickly commit the paper document to an electronic format during the hearing.)

We strongly recommend that Columbia and Cookeville be made to have the same access and functionality as Nashville as soon as possible.

4. Will a login be required? (An attorney can only be logged in once on the system, if they are logged into the system at the court, they cannot be logged in their office)

Subcommittee Recommendation: We understand that, if the counsel tables are equipped as we recommend above, there would be no need for attorneys to log in while in the courtroom. This is because the computers on the counsel tables would be permanent and set-up to access CM/ECF as a public user, and because using the wireless hotspot would be the same as sitting in your office and using CM/ECF.

5. Privacy issues? (Sealed documents, SSN)

Subcommittee Recommendation: We understand that documents and information cannot be adequately protected when it is sealed and unsealed in an electronic format. Until technical advances are made so that the process can protect the information, we recommend that all sealed documents be on paper so, if portions are later redacted or unsealed, the Court and the parties can keep the necessary information protected.

6. Will video conferencing work seamlessly electronic filing so that a purely electronic hearing could take place via video conference?

Subcommittee Recommendation: We understand that the system will allow seamless video conferencing so exhibits can be presented from a remote location for hearings to be conducted by the video conferencing. We understand that the inability to see more than one person at a time on the system may make it less desirable for a party to conduct some evidentiary hearings in this manner; however, we believe that the system will be useful for many less complicated hearings and proceedings.

7. What Training Subcommittee issues are implicated by our recommendations?

Subcommittee Recommendation: Due to the nature of our recommendations, we also recommend that the Training Subcommittee consider creating hands-on training in the courtroom regarding the use of the permanent CM/ECF computers and the use of the wireless hotspot.

If you have any comments, please contact:

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