

# ELECTRONIC EVIDENCE

## ELECTRONIC EVIDENCE PROCEDURES



### 1 Scope and Application

- 1.1 The United States Bankruptcy Court for the Middle District of Tennessee has approved procedures for electronic submission of evidence. Cite these procedures as “E-Evidence Procedures” (EEP).
- 1.2 Electronic Evidence as defined in §2.2 below for use in any trial, hearing or motion docket shall be submitted using the “Electronic Evidence Submission Application” (EESA) available through CM/ECF at <https://ecf.tnmb.uscourts.gov>. These EEP apply in all cases, contested matters and adversary proceedings.
- 1.3 Except as provided herein, evidence will not be accepted by the Court or Clerk of Court other than through EESA.
- 1.4 Evidence that is impractical or impossible to submit in electronic format—such as physical objects, original documents when required and oversized documents not capable of conversion to a format listed below—are not subject to EEP.
- 1.5 Any matter or proceeding in a case beginning with case prefix “1” or “2” (Cookeville and Columbia Divisions) are excluded from the EEP unless the case, matter or proceeding has been transferred to Nashville for trial, hearing or the motion docket.
- 1.6 The Court will provide electronic evidence training at <http://www.tnmb.uscourts.gov> under the heading “Training.” In advance of any trial, hearing or motion docket counsel is encouraged to contact the Clerk of Court for any mock evidence presentation practice. The Clerk’s office will provide technical assistance with

respect to EEP to any party in advance of trial, hearing or motion docket but not at or during a trial, hearing or motion docket.

1.7 These EEP take effect on August 1, 2012.

## 2 Definitions

2.1 CM/ECF – The Case Management/Electronic Case Filing System maintained by the Federal Judiciary.

2.2 Electronic Evidence – Includes, but is not limited to, documents, diagrams, charts, photographs, audio files, video files, e-mails, texts and power points that are electronically submitted for use at a trial, hearing or motion docket.

2.3 Filer – An individual described in ECF Procedure 4(a) registered to use ECF without limitation.

2.4 Technical Definitions – See, Appendix 1 for technical definitions contained in section 3, below.

## 3 Electronic Format Requirements

### 3.1 Court Authorized Electronic Evidence Formats.

3.1.1 **Allowable Formats.** All electronic evidence must be submitted in one of the following formats:

- PDF
- PNG, GIF, JPG/JPEG
- WMV
- MP3
- PPT/PPTX

Any of the above allowable formats can be compressed into a ZIP file.

It is the responsibility of the party submitting evidence to ensure the file format is compatible with EESA.

- 3.2 **File size.** The maximum file size for EESA is 10.0 megabytes (MB). Exhibit files may be compressed in ZIP format only. Any compressed exhibit file shall not exceed 10.0 MB.

**Exhibit files in excess of 10.0 MB.** If an exhibit file must exceed 10.0 MB, the file shall be provided to the courtroom deputy on a thumb drive the same day that other exhibit files are submitted. Parties submitting files larger than 10.0 MB must also provide the file(s) on a thumb drive to all other parties due to receive them, and must comply with the requirements of Section 4, below.

- 3.3 **Disabling of Security Features.** Any security features in an exhibit file, such as passwords, locked editing or similar features, must be disabled.

## 4 Document Management Protocol (DMP)

- 4.1 In any trial, hearing or motion docket all parties must provide access to exhibits using EESA.

### 4.2 Timing of Submission

- 4.2.1 **Trials, Hearings and Motion Dockets.** Except as provided in a pretrial order:

- All evidence must be submitted no later than 48 hours before trial, hearing or motion docket using EESA;
- Parties are to confer concerning the admissibility of electronic evidence in accordance with LBR 9014-1, and 48 hours before a trial, hearing or motion docket designate in EESA exhibits eligible to be admitted by stipulation.
- Upon request, originals are to be made available for inspection.

4.2.2 **Identifying Exhibits.** The file name of any electronic evidence shall match the format designated in Appendix 2.

4.3 **Post -Trial/Post Hearing.** If no appeal is filed or there is no further appellate review of an order or judgment, the Clerk of Court will notify the parties electronically by issuing a "Notice to Retrieve Exhibits and/or Delete Electronic Exhibit Files." For purposes of LBR 9070-1 electronic evidence is treated the same as paper copies or files.

**5 Redaction.** The Clerk of Court will not remove or redact any electronic evidence containing personally identifiable information, confidential information or proprietary information. The filer submitting electronic evidence is responsible for redaction of such information, or limiting access to such information.

**6 Equipment.** With the exception of courtrooms located in Columbia, Tennessee and Cookeville, Tennessee, the Court provides audio-video presentation equipment in each courtroom. Any additional equipment required to view and/or listen to electronic evidence is the responsibility of the party offering the evidence.

**7 Failure to Submit Evidence in Compliance with EEP.** If a party fails to submit evidence in compliance with EEP, upon request of any other party, the Court may:

(a) Prohibit the non-complying party from using the evidence at the hearing, trial or motion docket unless the failure was substantially justified or is harmless;

(b) On motion and after opportunity to be heard, order payment of the reasonable expenses, including attorney's fees, caused by the failure, and impose other appropriate sanctions.

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## APPENDIX 1 – TECHNICAL DEFINITIONS

**GIF** – Short for **G**raphics **I**nterchange **F**ormat, GIF is a file format for storing graphical images up to 256 colors. It uses LZW compression which is a lossless compression method. GIF files are probably the most popular on the web. They are used in logos and color images with 256 or fewer colors. For images containing text, GIF tends to be better than JPG because the files tend to be smaller and JPG files usually have some degree of compression which can make text blurry.

**JPG/JPEG** - Short for **J**oint **P**hotographics **E**xperts **G**roup, JPEG is a commonly used method of lossy compression for digital photography (image). The degree of compression can be adjusted, allowing a selectable tradeoff between storage size and image quality. JPEG typically achieves 10:1 compression with little perceptible loss in image quality. JPEG compression is used in a number of image file formats. JPEG/Exif is the most common image format used by digital cameras and other photographic image capture devices; along with JPEG/JFIF, it is the most common format for storing and transmitting photographic images on the World Wide Web. These format variations are often not distinguished, and are simply called JPEG.

**MP3/MPEG** – Short for **M**oving **P**icture **E**xperts **G**roup, M-PEGs are a set of standards established for the compression of digital video and audio data into a very small file (about one-twelfth the size of the original file) while preserving the original level of sound quality when it is played. There are various forms of MPEGs: MPEG-1, MPEG-2 and MPEG-4. MPEG-1 or MPEG-2 Audio Layer-3 are commonly referred to as MP3s. MP3 (MPEG-1 Audio Layer-3) is a standard technology and format for compressing a sound sequence MP3 files (identified with the file name suffix of ".mp3"), which is available for downloading from a number of Web sites. Many Windows users will find that they have a player built into their operating system.

**PNG** – Short for **P**ortable **N**etwork **G**raphics, PNG is an extensible file format for the lossless, portable, well-compressed storage of raster images. PNG provides a patent-free replacement for GIF and can also replace many common uses of TIFF.

Indexed-color, gray-scale, and true color images are supported, plus an optional alpha channel for transparency. Sample depths range from 1 to 16bits per component (up to 48bit images for RGB, or 64bit for RGBA).

**PDF/.pdf** – Short for **P**ortable **D**ocument **F**ormat, the PDF was originally developed by Adobe Systems. PDF is a file format that captures all elements of a printed document as an electronic image that can be viewed, navigated, printed or forwarded. PDF files can be viewed using Adobe Acrobat Reader, which is a free software application provided by Adobe Systems, Adobe Capture or similar products. These files can also be viewed in most newer web browsers.

**PPT/PPTX** – A presentation file created by Microsoft PowerPoint, PPT/PPTX is a program used to create slide show presentations using text, images, formatting, animations, drawn objects, and other media. It is commonly used in business meetings, marketing applications, and academic classroom settings. In contrast to .PPT files, which store all presentation data in a single binary file, PPTX files are created using the Open XML format, which stores documents as a collection of separate files in a compressed ZIP package. The file types include XML document properties, images, macros, charts, and other media files.

**Windows Media Video (WMV)** – A video compression format for a number of Microsoft technologies based on MPEG-4. It is a version 9 of the WMV codecs used for streaming videos.

**Zip files** (.zip or .zipx) – Single files, also known as "archives", that contain one or more compressed files. Zip files make it easy to keep related files together and make transporting, e-mailing, downloading and storing data and software faster and more efficient. The Zip format is the most popular compression format used in the Windows environment, and WinZip is the most popular compression utility.

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## APPENDIX 2 – IDENTIFYING EXHIBITS

**File Name Conventions.** The following format must be used when submitting electronic evidence:

ExhibitNumberOrLetter.DescriptiveExhibitName

► **First File Name Component: Exhibit Number or Letter.** The first component of the file name shall be a number or a letter, depending on the party's role.

**Plaintiffs/Movants.** Plaintiffs and movants shall use numbers.

**Defendants/Respondents.** Defendants and respondents shall use letters. If the alphabet is exhausted then letters will repeat. For example: "AA" or "AAA."

► **Second File Name Component: Descriptive Exhibit Name.** The second component of the file name shall be a brief description of the exhibit.

**WARNING:** The descriptive file name will appear in the exhibit list generated by the "Electronic Evidence Submission Application" (EESA). It should be sufficiently descriptive to identify the exhibit, and it should not contain any information the filer does not want displayed to the Court or to other parties.

### File Name Examples:

**Example of plaintiff/movant exhibits:** A plaintiff/movant filer might submit two separate PDF files, named as follows: "1.Deposition of Jane Doe" and "2.Licenseing Agreement between Smith and ABC Corp." EESA will generate an exhibit list from the submission of these files with the following items:

1. Deposition of Jane Doe.pdf

## 2. Licensing Agreement between Smith and ABC Corp.pdf

**Example of defendant/respondent exhibits:** Again, the filer will need to rename the files on the filer's system or computer prior to submission. The defendant/respondent filer might submit three separate files, one JPEG file and two PDF files, named as follows: "A.Photo of 123 Maple Road, Any City, USA"; "B.Debtor's voluntary petition"; and "C.Letter from Roger Smith dated October 3, 2005." EESA will generate an exhibit list from the submission of these files with the following items:

- A. Photo of 123 Maple Road Drive, Any City, USA.jpeg
- B. Debtor's voluntary petition.pdf
- C. Letter from Roger Smith dated October 3, 2005.pdf