

UNITED STATES BANKRUPTCY COURT FOR THE MIDDLE DISTRICT OF TENNESSEE
701 BROADWAY, NASHVILLE, TENNESSEE 37203
Tel 615-736-5584
www.tnmb.uscourts.gov



ELECTRONIC EVIDENCE PROCEDURES

LAST REVISED MARCH 23, 2017

TABLE OF CONTENTS

Contents

1	Scope and Application	1
2	Definitions	3
3	Electronic Formatting Requirements	6
4	Document Management Protocol (DMP)	8
5	Electronic Evidence Disposal	13
6	Redaction	14
7	Equipment	15
8	Failure to Submit Evidence in Compliance with EEP	16

SCOPE AND APPLICATION

1 Scope and Application

1.1 E-Evidence (EEP)

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” or “EEP.”

1.2 CM/ECF Exhibit Submission Requirement

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. Except as provided herein, evidence will not be accepted by the court or Clerk of Court other than through EESA.

1.3 CM/ECF Exhibit Limitations (Physical Objects, Original Documents, Oversized Documents)

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 in § 3 below — are not subject to EEP.

1.4 EEP Exclusion (Columbia/Cookeville)

Any matter or proceeding in a case beginning with case prefix “1” or “2” (Cookeville and Columbia Divisions) is excluded from the EEP unless the case, matter or proceeding has been transferred to Nashville for trial, hearing or the motion docket. However, in specific cases, contested matters or proceedings, the court may require or allow by agreement of the parties, the upload of exhibits through EESA.

1.5 Training and Courtroom Availability

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

SCOPE AND APPLICATION

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.

Effective Date

The revised EEP take effect on March 23, 2017.

2 Definitions

2.1 CM/ECF (Case Management/Electronic Case Files)

CM/ECF is the case management and electronic court filing system for most of the United States Federal Courts.

2.2 Electronic Evidence

Includes, but is not limited to, documents, diagrams, charts, photographs, excel spread sheets, 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 GIF

Short for Graphics Interchange Format, 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.

2.5 JPG/JPEG

Short for Joint Photographics Experts Group, 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.

2.6 MP₃/MPEG

Short for Moving Picture Experts Group, 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.

2.7 PACER (Public Access to Court Electronic Records)

PACER is an electronic public access service that allows users to obtain case and docket information online from federal appellate, district, and bankruptcy courts, and the PACER Case Locator. Currently, PACER cannot be used to upload exhibits or present evidence in EESA.

2.8 PDF/.pdf

Short for Portable Document Format, 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 web browsers.

2.9 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).

2.10 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.

2.11 Thumb Drive

A small, portable, solid state hard drive that can be inserted into a USB port for storage and retrieval of data. Also known as a flash memory drive, jump drive, pen drive and USB drive.

2.12 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.

2.13 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.

ELECTRONIC FORMATTING REQUIREMENTS

3 Electronic Formatting Requirements

3.1 Court Authorized Electronic Evidence Formats

All electronic evidence must be submitted in one of the following allowable formats:

- PDF
- PNG, GIF, JPG/JPEG
- WMV
- MP3
- PPT/PPTX
- EXCEL (in very limited circumstances)

Any of the allowable formats can be compressed into a ZIP file as long as the ZIP file does not exceed the ECF limits. See, § 3.2.

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

3.2 File Size

Maximum file size for EESA can be found in CM/ECF by going to the court's website located at www.tnmb.uscourts.gov → Online Services → CM/ECF and logging in. Once on the CM/ECF opening page and the CM/ECF logo is shown (Figure 1 below), click on the logo → click the "Further court information" link to obtain the latest MB capacity or file size.



Figure 1.

ELECTRONIC FORMATTING REQUIREMENTS

Exhibit files may be compressed in ZIP format only. Any compressed exhibit file shall not exceed the “Maximum Merge Document Size” limit listed in CM/ECF.

3.2.1 Exhibit Files in Excess of the MB Limit

If an exhibit file exceeds the required MB limit indicated in CM/ECF, the file shall be provided to the courtroom deputy on a thumb drive/flash drive the same day that other exhibit files are required to be submitted. Unless some other method of delivery is agreed to, parties submitting files larger than the required MB must also provide the file(s) on a thumb drive/flash drive to all other parties due to receive them, and must comply with the requirements of § 4, below.

3.2.2 Formatting Exhibit File Folders for Exhibits in Excess of the MB Requirement in EESA

Before providing the courtroom deputy a thumb drive/flash drive as noted in § 3.2.1, the Party must produce/file a “place holder” exhibit in EESA by creating a PDF with the exhibit name and number matching the exhibit name and number in the thumb drive/flash drive. This will allow the court to upload/replace the exhibit(s) contained in the thumb drive/flash drive with the corresponding “place holder” exhibit file created in EESA.

3.3 Disabling of Security Features

Any security features in an exhibit file, such as passwords, locked editing or similar features, must be disabled. This includes exhibits provided by thumb drive/flash drive as indicated in § 3.2.

4 Document Management Protocol (DMP)

4.1 Access to EESA

In any trial, hearing or motion docket, all parties must provide access to exhibits using EESA's exhibit exchange function.

4.2 Timing of Submission – Trials, Hearing and Motion Dockets

Except as provided in a pretrial order, or excluded under these procedures, exhibits for a trial, hearing or motion docket shall be submitted, as indicate below:

- Exhibit submission for trials are governed by pretrial orders.
- Hearings or Motion Dockets
 - Noon on Friday for Tuesday hearings or motion docket; and
 - Noon on Monday for Wednesday hearings and motion docket
- Parties are to confer concerning the admissibility of electronic evidence in accordance with LBR 9014-1, and 48 hours before a scheduled trial, hearing or motion docket should designate, in EESA, exhibits to be admitted by stipulation.
- Upon request, originals are to be made available for inspection.

4.3 Identifying Exhibits

4.3.1 Exhibit File Naming Conventions. The file name of any electronic exhibit shall contain numbers and a brief description of the exhibit, as indicated below:

ExhibitNumber.DescriptiveExhibitName

The exhibit naming convention must match the exhibits in EESA.

4.3.2 Numbering Exhibits. The following numbering scheme shall be used when labeling an exhibit:

DOCUMENT MANAGEMENT PROTOCOL

WARNING:

Because the exhibit's descriptive file name appears on the exhibit list generated by the "Electronic Evidence Submission Application" (EESA), it should not contain any personally identifiable information the Filer does not want displayed to the court or to other parties in the courtroom during the presentation portion a trial, hearing or contested matter.

Movant and Plaintiff shall number exhibits beginning with the number one followed by two zeros and the first number for the movant's or plaintiff's exhibit.

For example, 1001, 1002, 1003 ... 1099 ... 1899, etc.

Respondent and Defendant shall number exhibits beginning with the number two followed by two zeros and the first number for the respondent's or defendant's exhibit.

For example, 2001, 2002, 2003 ... 2099 ... 2899, etc.

Other parties to a contested matter or trial shall follow a similar four-digit numbering scheme beginning with the number three.

For example, 3001, 3002, 3003 ... 3099 ... 3899, etc.

Should there be more than three parties in any contested matter or proceeding, then an ascending four-digit numbering scheme shall be applicable.

For example, 4001 (Party #4) ... 5001 (Party #5) ... 6001 (Party #6), etc.

Multiple Parties (more than 3 parties). When more than three parties are submitting exhibits in any hearing or contested matter on a motion docket, the parties should confer regarding the numbering scheme of those additional parties no later than 72 hours before the scheduled hearing time. The numbering scheme for multiple parties for a trial should be discussed at the pretrial conference and may be addressed in the Pretrial Order.

DOCUMENT MANAGEMENT PROTOCOL

4.3.3 Descriptive Exhibit Name. The file name shall contain a brief description of the exhibit. The exhibit name should be descriptive enough for the court and parties to identify the exhibit being addressed in a trial, hearing or contested matter. The descriptive exhibit may contain letters (ABC, abc), numbers (1, 2, 3), periods (.), spaces (a b c), hyphens (-) and underscores (_).

File Name Examples:

Example of plaintiff/movant exhibits: The plaintiff/movant submits two separate PDF files, with the following naming convention: “1001.Deposition of Jane Doe” and “1002.Agreement between Smith and ABC Corp.” EESA will generate an exhibit list from the submission of these files with the following items:

1001.Deposition of Jane Doe.pdf

1002.Agreement between Smith and ABC Corp.pdf

Example of defendant/respondent exhibits: The defendant/respondent submits three separate files, one JPEG file and two PDF files, with the following naming convention: “2001.Photo of 123 Maple Road Any City USA”; “2002.Voluntary Petition”; and “2003.Letter from Roger Smith dated October 3 2005.” EESA will generate an exhibit list from the submission of these files with the following items:

2001.Photo of 123 Maple Road Drive_Any City_USA.jpeg

2002.Voluntary petition.pdf

2003.Letter from Roger Smith dated October 3 2005.pdf

4.4 Evidence Presentation: Trial, Contested Hearing or Motion Docket.

Each courtroom is equipped with one dedicated laptop for use by parties. Laptops are located on each lectern in the courtroom. Laptops shall not be removed from the lectern or the settings adjusted in any manner.

4.4.1. Evidence Presentation Procedures

Except as provided in § 4.4.2, these laptops shall be used based on the following procedures:

- All parties are to present evidence by use of thumb/flash drives.
- Thumb/flash drives shall contain all exhibits imported to EESA by a party, and the naming conventions in the thumb drives must match those in EESA.
- Other than rebuttal evidence, no exhibit will be accepted for admission by the court if it is not contemporaneously found in EESA. Only exhibits uploaded to EESA will be admitted unless the court, for cause, makes an exception.

4.4.2 Efficiency of Use Exception. Where evidence presentation is more efficient by use of a presenter's laptop or other compatible device, a party may be permitted to use their own laptop or other compatible device with reasonable notice to the Clerk of Court by calling the appropriate courtroom deputy and notifying them accordingly at the following numbers:

Judge Harrison	Courtroom 3	615-736-5469
Judge Mashburn	Courtroom 1	615-736-7682
Judge Walker	Courtroom 2	615-736-7681

DOCUMENT MANAGEMENT PROTOCOL

No later than 2 business days from the scheduled trial, contested hearing or motion docket, a presenter seeking permission to use a laptop or other device must call the respective courtroom deputy with the following information:

- Case number/adversary proceeding number;
- Contested hearing(s) or trial date(s);
- Device type to be used (if applicable); and
- Contact person and telephone number.

5 Electronic Evidence Disposal

Absent appellate review of an order or judgment, LBR 9070-1 controls disposition of all electronic evidence.

6 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 or exhibit(s) is responsible for redaction of such information, or limiting access to such information.

7 Equipment

With the exception of courtrooms located in Columbia, Tennessee and Cookeville, Tennessee, the Court provides audio-video presentation equipment.

There is a laptop, located at the lectern in each courtroom, available for evidence presentation.

Any additional equipment required to view and/or listen to electronic evidence is the responsibility of the party offering the evidence. Parties should confer in advance with the courtroom deputy concerning any evidence presentation which requires additional equipment a party intends to bring.

FAILURE TO SUBMIT EVIDENCE IN COMPLIANCE WITH EEP

8 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:

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