

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ALASKA

In re

JOSEPH JOHN ETCHEVERRY and
NIKI LEE ETCHEVERRY,

Debtor(s)

Case No. F05-00044-HAR

In Chapter 7

MEMORANDUM ASSESSING
SANCTIONS ON COURT'S ORDER TO
SHOW CAUSE

1. INTRODUCTION- The court issued an order to show cause on its own motion because debtors' attorney had not signed and filed the proper local bankruptcy form, LBF 37A,¹ bearing her original signature, but electronically filed a form bearing a typed signature preceded by an "/s/." In addition, the LBF 37A, with the original signature of debtors, and the /s/ signature of the attorney were both dated after the date this case was filed. Both the improper signature and tardy execution are violations of the local rules concerning the electronic filing of documents.

While the court might have imposed more drastic sanctions, it assessed a fine of \$50 payable to the clerk as appropriate in this case because the breaches, while significant, were not intentional.

Given the importance of having the original signatures of a debtor and the debtor's attorney as a key into the electronic filing with this court, such breaches cannot be treated casually.

¹ A copy of the form, AK LBF 37A is appended as Appendix A. It is used for individual debtors and joint petitions.

2. DISCUSSION- This case was electronically filed on January 13, 2005. On January 18, 2005, a Declaration Re: Electronic Filing of Petition, Schedules and Statements and Plan If Chapter 12 or 13 Case, which is Alaska Local Bankruptcy Form 37A, was filed.²

The LBF 37A is a form to be used at the commencement of a chapter 7 case. The rule, AK LBR 5005-2(c)(2), provides that:

- a debtor who electronically files a petition, lists, schedules and statements, which would require the original signature of the debtor if filed conventionally (over the clerk's counter), must prepare a form, AK LBF 37A or AK LBF 38B,³ bearing the original signatures of the debtor and the debtor's attorney, if any;
- the AK LBF 37A or AK LBF 37B constitutes the original signature for filing purposes; and,
- the AK LBF 37A or 37B must be signed before the petition is filed, and itself "conventionally filed" withing 15 days of the petition date.⁴

The wording of AK LBF 37A is such that it also attests to being signed by the attorney before the case has been electronically filed.

² Docket No. 3.

³ A copy of AK LBF 37B is appended as Appendix B. It is used for corporations, partnerships and LLCs.

⁴ AK LBR 5005-2(c) reads:

(c) Signatures.

(1) . . .

(2) Debtors.

[A] For all petitions, lists, schedules and statements requiring the signature of the debtor(s) that are filed electronically, a Declaration Re: Electronic Filing, AK LBF 37A or 37B, as applicable, must be prepared by the participant, bearing the original signatures of the debtor(s) and the attorney for debtor(s).

[B] The declaration constitutes the debtor(s) original signatures for filing purposes.

[C] The original declaration must be:

(i) signed before the petition is filed; and

(ii) filed conventionally with the Bankruptcy Court within fifteen (15) days of the date the petition is electronically filed.

In the non-electronic world, the statements, schedules and lists which are required to be filed in a bankruptcy case⁵ must be verified as provided by 28 USC § 1746 (which provides for an unsworn declaration under penalty of perjury to serve the purpose of an affidavit, sworn declaration, verification, and the like).⁶ A bankruptcy court may provide for electronic filing by local rule.⁷

Although the issues in this case may appear to some as being hyper-technical or fussy, the requirement that the correct form, AK LBR 37A or 37B, be prepared is in fact a key element in the electronic filing system – you might even say, the key to admission to the system. And, this requirement is no more onerous on the debtor and the attorney than the requirement of signatures for a conventional paper filing. It is the assurance that the papers being filed are, in fact, the authorized petition of the debtor, who legally binds him or herself to information being transmitted. Otherwise, a debtor may say he or she did not intend or authorize the filing of the particular information.

Other courts have imposed sanctions in somewhat similar fact situations to the breaches committed in this case.⁸

⁵ FRBP 1007.

⁶ FRBP 1008. See, also, AK LBR 5005-2(c)(3), which provides that, for electronic filers, verified documents are to be filed electronically, “[B] Except for documents covered by paragraphs (c)(1) and (c)(2), the signature page of the verified document filed electronically must be an imaged (scanned) document bearing a digital copy of the original signature.”

⁷ FRBP 5005(a)(2).

⁸ In re Phillips, 317 BR 518 (8th Cir BAP 2004) (sanctions were \$284 to debtor, \$750 to court, and \$300 to the trustee); In re Wenk, 296 BR 719 (Bankr ED Va 2002).

There are potential sanctions, some severe, connected to the violation of AK LBR 5005-2(c), including dismissal of the case or loss of electronic filing privileges⁹ Since this court, like many bankruptcy courts across the country, has been forced by budgetary austerity to require mandatory electronic filing for attorneys who regularly appear in bankruptcy cases,¹⁰ in order to compensate for the loss of staff to handle paper filings, it is imperative that the requirements of CM/ECF (Case Management/Electronic Case Filing), as the system is called, be adhered to.

While I am sure that debtor's attorney did not consciously or maliciously disregard the rules, there was a degree of negligence and lack of attention calling for a monetary sanction of \$50. That will be imposed by a separate order.

DATED: February 14, 2005

HERB ROSS
U.S. Bankruptcy Judge

⁹ Alaska LBR 5005-2(k)(2),(3):

(2) Effect of Failure to File Declaration Re: Electronic Filing. In the event that a participant fails to timely file the Declaration Re: Electronic Filing, AK LBF 37A or AK LBF 37B, as applicable, as provided in paragraph (c)(2), the petition may be dismissed by the court after a hearing on shortened time of not less than five (5) days notice.

(3) Other Consequences. In addition to the foregoing, any misuse of the CM/ECF System, or intentional noncompliance with its requirements, may result in revocation of the participant's login and password privileges and/or the imposition of sanctions as provided in District of Alaska Local Rule 1.3.

¹⁰ See, AK LBR 5005-2(b), (d).

APPENDIX A- ALASKA LBF 37A

Name of Attorney)
 (Name of Firm)
 (Address)
 (Telephone)
 (Telefax)
 (Attorney for _____)

AK LBF 37A

**UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF ALASKA**

In re:

Debtors.

Case No.

Chapter

**DECLARATION RE: ELECTRONIC FILING OF
 PETITION, SCHEDULES AND STATEMENTS
 AND PLAN IF CHAPTER 12 OR 13 CASE
 [INDIVIDUALS]**

PART I - DECLARATION OF PETITIONER(S)

I [We] _____ and _____, the undersigned debtor(s), ***hereby declare under penalty of perjury*** that the information given or to be given my [our] attorney and the information provided in the electronically filed petition, statements, schedules, matrix, and in my [our] chapter 12 or 13 plan (if this is a case under such chapter) and any amendments thereto, is or will be true and correct. I [We] consent to my [our] attorney sending my [our] petition, statements and schedules (and plan, if applicable) and any amendments thereto, to the United States Bankruptcy Court electronically. I [We] understand that this Declaration re: Electronic Filing is to be filed with the Clerk not later than 15 days following the date the petition is electronically filed. I [We] understand that failure to file the signed original of this Declaration will result in the dismissal of my [our] case after a hearing on shortened time of no less than five days notice.

- ☐ If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7: I am [We are] aware that I [we] may proceed under chapter 7, 11, 12 or 13 of 11 United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7. I [We] request relief in accordance with the chapter specified in this petition.

Dated: _____

Signed: _____
 (Applicant)

 (Joint Applicant)

PART II - DECLARATION OF ATTORNEY

I ***declare under penalty of perjury*** that the debtor(s) signed this form before I electronically submitted the petition, schedules, and statements (and chapter 12 or 13 plan, if applicable). Before filing, I will give the debtor(s) a copy of all documents to be filed with the United States Bankruptcy Court, and have followed all other requirements in the most recent ECF System Procedures. I further declare that I have examined or will examine the debtor's petition, schedules, and statements and any amendments thereto, and, to the best of my knowledge and belief, they are or will be true, correct, and complete. I further declare that I have informed the petitioner(s) that [he or she or they] may proceed under chapter 7, 11, 12 or 13 of Title 11, United States Code, and have explained the relief available under each such chapter. This declaration is based on all information of which I have knowledge.

Dated: _____

 Attorney for Debtor(s)

APPENDIX B- ALASKA LOCAL BANKRUPTCY FORM 37B

Name of Attorney)
 (Name of Firm)
 (Address)
 (Telephone)
 (Telefax)
 (Attorney for _____)

AK LBF 37B

**UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF ALASKA**

In re:

Case No.
 Chapter

Debtors.

**DECLARATION RE: ELECTRONIC FILING OF
 PETITION, SCHEDULES AND STATEMENTS**
 [CORPORATION/PARTNERSHIP/LLC]

PART I - DECLARATION OF PETITIONER

I _____ the _____ of the petitioner herein,
hereby declare under penalty of perjury that the information given or to be given its attorney and the information provided in the electronically filed petition, statements, and schedules, and any amendments thereto, is or will be true and correct. Petitioner consents to its attorney sending its petition, matrix, statements and schedules to the United States Bankruptcy Court electronically. I understand that this Declaration re: Electronic Filing is to be filed with the Clerk not later than 15 days following the date the petition was electronically filed. I understand that failure to file the signed original of this Declaration will result in the dismissal of the case after a hearing on shortened time of no less than five days notice.

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor. The debtor requests relief in accordance with the chapter specified in this petition.

Dated: _____

Signed: _____
 (Debtor's Authorized Representative)

PART II - DECLARATION OF ATTORNEY

I **declare under penalty of perjury** that the debtor's authorized representative signed this form before I electronically submitted the petition, schedules, and statements. Before filing, I will give the debtor a copy of all forms and information to be filed with the United States Bankruptcy Court, and have followed all other requirements in the most recent ECF System Procedures. I further declare that I have examined or will examine the above debtor's petition, schedules, and statements and any amendments thereto, and, to the best of my knowledge and belief, they are or will be true, correct, and complete. This declaration is based on all information of which I have knowledge.

Dated: _____

 Attorney for Debtor