

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA**

CM/ECF USERS' ADVISORY GROUP

JUNE 20, 2002, MEETING

MINUTES

A meeting of the CM/ECF Users' Advisory Group (UAG) was held on Thursday, June 20, 2002. The meeting, which was held via video teleconference at the Court's Alexandria, Norfolk and Richmond facilities, commenced at 2:30 P.M. and concluded at 3:30 P.M. The following persons were in attendance at the meeting: Robert Coulter, Bob Weed, Barry Spear, Debera Conlon, Bill Parkinson, Charles Krumbein, Judge Adams, Chuck Miller, Renee Mitchell Paxton, Pat Woodhouse, Peggy Grivetti, Barry Wells, Debbie Lowe, Dick Napoli and Bill Redden.

Approval of Minutes from Last Meeting and Opening Comments (*Bill Redden*)

Bill Redden asked for comments and suggestions for changes to the proposed minutes from the last UAG meeting. There being no comments or suggestions for changes, the minutes from the April 10, 2002, UAG meeting were approved and will be posted in final form to the Court's CM/ECF Home Page.

Bill advised that there has been recent activity concerning the bankruptcy reform legislation in conference between the Senate and House of Representatives. The ABI web site reported on June 20, 2002, that "A members-only gathering of key House and Senate bankruptcy conferees to try to hash out their differences on the bill's abortion protest-related language on Tuesday [June 18] yielded some general agreement – but no concurrence on specific legislative wording...."

Bill noted that a revision to the Court's Local Bankruptcy Rules would take effect on July 1, 2002, and that a notice to this effect, dated May 29, 2002, had been posted physically at each division of the Court and at the Court's web site.

Bill also noted that the Court had entered Standing Order No. 02-2, which incorporated by reference a revised CM/ECF administrative procedures exhibit, the substance of which would be addressed later in the UAG meeting. The Standing Order will become effective July 1, 2002. Bill advised that a notice to this effect had been posted physically at each division of the Court and at the Court's web site.

Bill referenced various handout items provided at the meeting to the meeting participants.

Bill also commented on the downtime experienced by external CM/ECF users last month, which was caused by a Cisco router problem. This problem was resolved by a Cisco engineering consultant hired by Sprint restoring external user access to CM/ECF. (Internal users were not adversely affected by the router problem.)

1. Current Status and Information of Interest

a. CM/ECF Statistical Information; Updated VAEB Internet Home Page Statistics Page Link (*Bill Redden*)

Bill commented on several statistical information handouts. The first handout is a snapshot of the new "Statistics" page linked to the VAEB Internet Home Page. Bill noted that the "Quarterly Trend" link and the "Feedback on website by E-mail" links are new features on the page. The second handout is a snapshot of the "Bankruptcy Cases" page, which shows filings for the current calendar year. (As of January 1, 2002, all new petition filings are being administered in the CM/ECF system.) The third handout is a bar chart showing new petition filings for the month of June 2002 (through June 19). Based on the filing trend for the month, to date, Bill estimated that something in excess of 2,300 petitions likely would be filed in the VAEB this month. The fourth handout is a spreadsheet for the month of May 2002 prepared by the Administrative Office of the U.S. Courts (AO). This spreadsheet, entitled "CM/ECF Bankruptcy Court Activities as of 5/31/02", is updated on a monthly basis by the AO. In this spreadsheet, Bill noted that the AO had been advised of a discrepancy in the "New Cases" total column. The cited figure of "2796" should be "2697" and the cited percentage of "82" should be "85."

b. CM/ECF Wave Courts Implementation Schedule (*Bill Redden*)

Bill commented on a fifth handout, a spreadsheet prepared by the AO, entitled "CM/ECF Implementation Status." This spreadsheet provides information on bankruptcy and district court CM/ECF implementation schedules with respect to "scheduled implementation start" date, "actual implementation start" date and the date in which a court commenced the "start of live operation." In the Fourth Circuit, eight of the nine bankruptcy courts are in one of these three implementation categories. (The VAWB may be included in Wave 11, which would make all of the bankruptcy courts in the Fourth Circuit CM/ECF courts.) The implementation process currently is through Wave 10. The next wave, Wave 11, is scheduled to commence in November 2002. It will be a split wave consisting of both bankruptcy and district courts. CM/ECF is underway in 71 bankruptcy courts and is operational in 34 of those courts. The courts of appeals are scheduled to begin participating in the wave implementation process in 2003.

c. Bankruptcy CM/ECF Version 2 Update (*Bill Redden*)

Bill noted that the testing of Bankruptcy CM/ECF Version 2 has been extended into June 2002. The ACC Team has participated in this testing effort. The anticipated mid-June 2002 release of Version 2 to the CM/ECF courts by the AO has been deferred until later this summer at the earliest. Given the lead time required by the CM/ECF courts to test and make internal changes resulting from this new version, it is likely that Version 2 will not be made operationally available in the VAEB until the end of this calendar year.

(This estimate is predicated on a summer 2002 release of Version 2 by the AO to the CM/ECF courts.)

d. Bankruptcy CM/ECF Release 3 Update (*Bill Redden*)

Bill advised that the AO recently asked the bankruptcy CM/ECF courts to provide feedback on planning the development of Bankruptcy CM/ECF Release 3 (R3). This release is intended to provide additional functionality and make further improvements to Bankruptcy CM/ECF. The AO's CM/ECF Project Team is working with the Modification Release Subcommittee (MR Subcommittee) of the Bankruptcy CM/ECF Working Group (Working Group). Both the MR Subcommittee and the Working Group are made up of court representatives. On June 19, 2002, the VAEB completed and transmitted a response to the AO on suggested modification requests and changes that should be included in R3. No tentative release date for R3 has been announced but the sense in the bankruptcy CM/ECF courts is that the release will occur before the end of 2003. The AO recently did advise, however, that if the pending bankruptcy reform legislation is enacted, it is likely that the release of R3 would be accelerated and largely limited to those CM/ECF changes needed to accommodate case administration requirements resulting from any enacted legislation. Other identified R3 development requirements necessarily would be deferred.

e. Migration of Judiciary National Gateways to Sprint Internet Data Centers (IDCs) (*Barry Wells*)

Barry Wells advised that the VAEB CM/ECF system would not be accessible beginning at 7:00 P.M., Friday, June 21, 2002, so that the relocation of the New Orleans national gateway, which serves several federal judicial circuits including the Fourth Circuit, could be undertaken to a commercial data center managed by Sprint (Sprint Internet Data Center). Barry indicated that the relocation effort should be completed by the upcoming weekend and that access to the VAEB CM/ECF system should be restored by 7:00 A.M., Monday morning, June 24 at the latest. Bill followed up by noting the information contained in his e-mail of June 14, 2002, to external CM/ECF users.

f. Court Entry of Standing Order Nos. 02-2 and 02-3 (*Bill Redden*)

Bill commented on the Court's entry of Standing Order No. 02-2, which incorporated by reference a revised administrative procedures exhibit dealing principally with the implementation of a new electronic order processing procedure (BOPS). To implement this new procedure, an amendment to VAEB LBR 9022-1 was required. This LBR is part of a revision to the VAEB LBRs that will take effect on July 1, 2002 (pursuant to Standing Order No. 02-3).

g. BOPS Update (*Barry Wells*)

Barry advised that the first phase (or front end) of BOPS would be implemented in the VAEB commencing on July 1, 2002. Barry noted that the next phase (or back end) of BOPS is continuing under development. This latter phase will test the feasibility of having the Bankruptcy Noticing Center (BNC) issue orders to parties who would not otherwise receive electronic notification of the entry of such orders by electronic means via the Internet. Barry indicated that he anticipates the testing of BNC functionality to be completed and this capability being added to BOPS before the end of this summer. Barry noted that use of BOPS on a pilot basis in the VAEB has gone well and that a record 261 proposed orders were submitted via Internet e-mail in BOPS one day in the prior week.

A question was asked about the need to continue providing envelopes to the clerk's office. Bill replied by noting that provisions of LBR 9022-1 would need to be followed in conjunction with the requirements set forth in the administrative procedures exhibit to new Standing Order No. 02-2. Bill urged all order proponents to review the May 29, 2002, notice on BOPS and the instructional material referenced in the notice, which can be accessed under the "Users' Guides" link at the VAEB CM/ECF Home Page. Bill further noted that until the BNC notice of entry functionality was in place, it would be necessary for order proponents utilizing BOPS to submit a hard copy of the proposed order along with envelopes as is being done under current practice. A hard copy of the list of parties to be served would not be necessary if the order proponent used the appropriate order template, which also is accessible at the VAEB "Users' Guide" link to the CM/ECF Home Page. Bill noted that use of the proper order template was a critically important component in the use of BOPS. Proposed orders submitted either via diskette or by paper (conventional) means must follow the corresponding requirements specified in the administrative procedures exhibit to Standing Order No. 02-2.

h. NIBS Conversion Program Update (*Karin Doggett*)

Karin Doggett provided an update on the VAEB NIBS conversion utility program being developed by the AO. Karin advised that all NIBS data had been successfully converted into the test conversion database made available for this purpose. Extensive testing of the converted data will begin on Friday, June 21, by the clerk's office. If this testing process is completed timely and successfully, it is likely that the actual conversion of the NIBS data into the CM/ECF live database server equipment could begin as early as August 1. The clerk's office will keep the bar and public apprised of the time frame in which the NIBS data conversion will take place.

i. Privacy/Public Access Materials Provided to Meeting Participants for Review and Comment (*Bill Redden*)

Bill opened the discussion on the Judicial Conference's new policy affecting privacy and public access to documents and docket sheets, which could be accessed by electronic means via the Internet. An e-mail had been transmitted to the UAG members and court representatives on June 5, 2002, containing three attachments, as follows: (1) Cover Memorandum (2) Draft "Notice of Availability of Case File Information and Policy Regarding Public Access" and Related Materials (draft Notice); and (3) "Background Information, Policy Statement and Frequently Asked Questions on the Privacy Policy of the Judicial Conference of the United States on Public Access to Electronic Case Files" (draft Background Information). (All three attachments were provided as handouts at the UAG meeting as well.) These three documents formed the basis for the discussion that ensued.

Bill noted that the draft Notice and Background Information documents were taken virtually verbatim from materials approved by the Judicial Conference and otherwise developed by the AO. A portion of these materials were plainly not relevant in a bankruptcy context and, accordingly, were not included in the draft documents. Whenever relevancy was either plain or reasonably should be considered for discussion purposes, the information in question was incorporated into the draft documents.

Bill noted that the Court was seeking input from the UAG for appropriate consideration and comment on the draft documents, which could be used as a means of educating the bar and litigants about the availability of documents on the Internet via PACER and the implementation of CM/ECF in the bankruptcy courts. Bill also noted that the Judicial Conference contemplated that the bankruptcy courts would review their own internal procedures, local rules and standing orders to be sure that they are not collecting and displaying personal identifiers when not required by statute, rule or form. Further input from the UAG and, as appropriate, from the Court's three bankruptcy bar local liaison committees and the LBR Standing Committee would be solicited as well.

A discussion ensued concerning the third ">" from the top of the first page of the draft Notice document. Specifically, comment was made about the listed item in which filers should exercise caution when filing documents that contain "individual financial information." While comment also was made that this item likely referred to financial account numbers, a concern was raised that an attorney could decline to list pertinent individual financial information using this provision as a reason for declining to do so. The view of the UAG was that this provision should be excised from the draft Notice document.

Inquiry was made concerning the extent to which identification of a minor child would be required under Judicial Conference policy. Bill commented

that subject to implementation of the policy by the Court, the draft Background Information document made provision for a minor child's initials being used in a case document rather than the minor child's full name. [See draft Background Information document at 5.]

Comment was made about the need of the U.S. Department of Justice for access to certain personal identifier information so the Department's statutory mission could be met.

No additional input was provided by the UAG concerning the draft Notice document or the draft Background Information document.

j. Debtors' Counsel Providing Copies of Petitions and Schedules in ECF Administered Cases to Trustees (*Debera Conlon*)

Bill Redden provided some introductory remarks concerning information he has received and forwarded to Debera Conlon concerning the extent to which debtors' counsel were providing copies of petitions and schedules to trustees for the trustees' use in preparation for and at § 341 creditors' meetings. Bill noted that this information was provided to Ms. Conlon in light of the U.S. Trustee's office's estate administration oversight and trustee supervision responsibilities. In preparation for this agenda item, prior to the UAG meeting, Ms. Conlon had spoken with her counterparts in the Norfolk and Alexandria U.S. Trustee offices and agreed to follow up further with her counterpart in the Alexandria office concerning the matter.

k. New Bankruptcy Events Menu Option for Limited Users (*Debbie Lowe*)

Debbie Lowe reported to the UAG on a new bankruptcy events menu option for limited users. Pursuant to LBR 9010-1, a proof of claim, a request for notice or notice of transfer of claim may be filed without the benefit of counsel permitted to appear under LBR 2090-1. The new menu option will permit a limited user to effect filings by electronic means, via the Internet, in CM/ECF cases. Debbie noted that registered participants will not see this option on their events menu. Operational instructions are being finalized and will be made available to limited users within the next week or so. A comment was made by a UAG member concerning a potential for abuse by law firms effecting such filings on behalf of clients when the work is undertaken largely by paralegals. Bill noted that the extent to which a limited user could effect such a filing is governed by LBR 9010-1 and that filings outside the scope of this LBR would not be permitted. Inappropriate activity would be subject to necessary ministerial action by the clerk's office and/or judicial action by the Court.

2. Technical Questions

No technical questions were presented for discussion at the meeting or raised during the meeting.

3. **Communications and Training Issues**

a. Requests from Bankruptcy Courts to Visit VAEB to Review CM/ECF *(Dick Napoli)*

Dick Napoli commented on a handout, which provided an updated schedule of planned visits by other courts to the VAEB. Since April 2002, representatives from six bankruptcy courts have visited the VAEB with three more such visits scheduled for July 2002. Two additional visits are pending from courts awaiting designation by the AO to a CM/ECF implementation “wave.” The next scheduled such wave will be announced by the AO in November 2002.

b. Updates to VAEB CM/ECF Home Page *(Dick Napoli)*

Dick provided information on the Court’s updated CM/ECF Home Page. He referenced the new “Users’ Guides” page link and the additional links placed on the page – addressing BOPS. Dick also noted that references to the Court as “EDVA” were being changed to “VAEB” or “EDVA Bankruptcy” in light of the Internet Home page created recently by the EDVA district court. This change is intended to avoid confusion in references to either or both home pages.

c. Use of Broadcast E-Mails, Updated Internet E-Mail Broadcast List *(Dick Napoli)*

Dick referenced the Court’s use periodically of broadcast Internet e-mail to CM/ECF users when information of interest or urgency is communicated by the Court. CM/ECF practices advisories, notices and other information have been communicated through the use of an updated Internet e-Mail broadcast list developed by the Court’s automation staff. In addition, the scroll bar and message area on the Court’s Internet Home Page and announcement areas on the Court’s CM/ECF Home Page have been used for this purpose as well. Dick invited comment and suggestions from the UAG.

Debbie Lowe noted that the Internet e-mail broadcast list pulled e-mail addresses from the CM/ECF system, which includes both primary and secondary addresses. Debbie emphasized the importance of users keeping their respective e-mail addresses current at all times.

d. CM/ECF Help Desk *(Debbie Lowe)*

Debbie Lowe, a member of the Clerk’s Office’s ACC Team, was present at the meeting to answer help desk and related questions from the meeting participants. No questions were asked of Debbie.

4. Handout Materials (*at meeting sites*)

Bill noted the handout materials provided to the meeting participants, which had been identified earlier in the meeting.

5. Other Issues of Interest

A meeting participant inquired about the possibility of registered users securing more than one password for use by authorized members of the users' firms or offices. More than one such password being permitted would enable multiple, contemporaneous access into the VAEB CM/ECF system by the registered user and authorized staff persons for filing and/or information querying purposes. Another meeting participant indicated that such a capability would be very user to registered participants. The clerk's office representatives agreed to explore whether this request could be honored and any other option(s) that may be available for this purpose as well.

6. Next Meeting Date, Location(s) and Time

The next UAG meeting will be scheduled for Thursday, September 12, 2002. The meeting will be held via video teleconference, through Sprint, from 2:00 P.M. to 3:45 P.M., at the Court's Alexandria, Norfolk and Richmond facilities. UAG members are requested to provide Bill Redden with proposed agenda items, issues of interest and technical questions by a date to be provided [September 4, 2002]. This will facilitate a review by court representatives of any submitted agenda items and technical questions prior to the next UAG meeting.

An agenda for the next UAG meeting will be sent out by the clerk's office to all members and court representatives, via Internet e-mail, on a date to be determined.

The meeting adjourned at 3:30 P.M.

Respectfully submitted,

William C. Redden