

**Local Rule 1001-2 Requires Attorneys to Obtain  
Original Signatures Prior to Filing Signed Papers via CM/ECF  
By: Chief Judge Caryl E. Delano**

Middle District Local Rule 1001-2(g)(2) provides that attorneys may file papers signed by their clients via CM/ECF by including a scanned paper with the client's signature or by including the client's name on a signature block (*e.g.*, “/s/ Client's Name”). Does this mean that attorneys must obtain their clients' original signatures BEFORE the attorney files signed papers with the Court? YES! May attorneys use digital software (such as DocuSign) in lieu of their clients' original signatures? NO! And must attorneys retain original signatures for two years after the closing of the case? YES!

**First, original signatures are important.** Bankruptcy petitions, schedules, affidavits, and unsworn declarations are all signed under penalty of perjury. Attorneys have an ethical obligation to review papers with their clients before the clients sign them. *See In re Whitehill*, 514 B.R. 687 (Bankr. M.D. Fla. 2014) (attorney who filed bankruptcy petitions, schedules, and statements without first obtaining clients' review or signature was subject to sanctions under Rule 9011). An in-person meeting between a client and an attorney (preferably) or a member of the attorney's staff provides the attorney with the opportunity to review the paper to be signed with the client and to obtain the client's signature. And having the client's original signature protects the attorney from the client later claiming that he or she did not sign the filed paper.

That said, Local Rule 1001-2(g)(2) recognizes that it's not possible for papers filed via CM/ECF to contain “original” signatures. So under the Rule, attorneys may either “scan in” their clients' signatures, or, if they prefer to file a paper in PDF format, they may include the “/s/” signature block, *e.g.*, “/s/ Signer's Name.”

In 2020, during the early days of the COVID-19 pandemic, the Court recognized that attorneys and their clients were likely unable to meet in person to review papers and for clients to sign papers such as bankruptcy petitions, schedules, affidavits, and unsworn declarations. Therefore, the Court entered Administrative Order FLMB-2020-4 and suspended the provisions of Local Rule 1001-2(g)(2), provided that the attorney: (1) had express written permission, including by email, to affix the signer's signature; (2) had in his or her possession an image, photograph, or facsimile of the signed signature page; or (3) had obtained the digital signature using software that provides authentication (*e.g.*, DocuSign).

In light of the April 10, 2023 termination of the COVID-19 national emergency, on September 27, 2023, the Court entered Administrative Order FLMB-2023-2 to vacate

FLMB-2020-4 and reinstate the requirements of Local Rule 1001-2, effective October 1, 2023.

The Court recognizes that alternatives for obtaining clients' signatures provided by Administrative Order FLMB-2020-4 were convenient. But this convenience is outweighed by (1) attorneys' obligations to review filed papers with their clients; and (2) the benefit—to the attorney—of being in possession of the client's original signature.

**Second, DocuSign is not a substitute for an original signature.** Given the proliferation of commercially available digital signature software (*e.g.*, DocuSign) in commercial and real estate transactions, you may question why the Court does not consider DocuSign to be a substitute for an original signature. Although signature authentication software provides some (but not complete) assurance that a party has authorized his or her signature, it does not address an attorney's obligation to review papers with the client before the client signs the paper under penalty of perjury. Because the Court considers a DocuSign signature to be the equivalent of an "/s/" signature, the Clerk's Office will not reject papers with a DocuSign signature. However, the use of DocuSign does not relieve an attorney's obligation to obtain an original signature before the signed paper is filed with the Court.

**Third, attorneys must retain papers with original client signatures for two years after the closing of the case.** Local Rule 1001-2(h) requires Electronic Filing Users to retain paper copies for two years after the case is closed of the following: petitions, schedules and supporting documents, affidavits and unsworn declarations; executed contracts required of debt relief agencies; and proofs of service executed by a non-lawyer (see the Local Rule for more complete descriptions). Although attorneys may perceive this requirement as being burdensome, it is designed to protect the attorney from a claim by the signing party that the signature (whether scanned in, or "/s/") is a forgery. Because handwriting experts generally need an original signature to opine on the authenticity of a signature, attorneys who do not retain their clients' original signatures (or, worse, who never obtained them in the first place) have an uphill battle to establish that their former client, or signatory to an affidavit or declaration, did in fact sign the paper in question.