

OFFICE OF THE CLERK
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

RICHARD CUSHING DONOVAN
CLERK

JOHN JOSEPH MOAKLEY
UNITED STATES COURTHOUSE
1 COURTHOUSE WAY, SUITE 2500
BOSTON, MA 02210
(617) 748-9057

**NOTICE OF PROPOSED ADMINISTRATIVE ORDER REGARDING
CASE MANAGEMENT/ELECTRONIC CASE FILES SYSTEM (“CM/ECF”)**

The United States Court of Appeals for the First Circuit hereby provides notice that it proposes to issue an Administrative Order Regarding Case Management/Electronic Case Files System (“CM/ECF”). Pursuant to Federal Rule of Appellate Procedure 25(a)(2)(D) and 25(c), the proposed administrative order authorizes the filing and service of documents by electronic means. October 13, 2009 is the projected date to begin electronic filing on a voluntary basis. January 1, 2010 is the projected date for attorneys' mandatory participation in the system. A party may be exempted from the electronic filing requirements by making a motion demonstrating good cause. The Notice of Docket Activity generated by the court's CM/ECF system constitutes service on all parties who have registered for the CM/ECF system, but does not replace the certificate of service required by Fed. R. App. P. 25.

The administrative order addresses the procedures and mechanics of the CM/ECF system and may be amended from time to time as necessary, with or without prior notice, by further order of the court. The clerk may make changes to the procedures for electronic filing to adapt to changes in technology or to facilitate electronic filing. The use of an administrative order is intended to give the court more flexibility to deal with unforeseen problems brought to the court's attention by ECF Filers, to make adjustments as needed once the system is in operation, and to accommodate technological developments.

Related amendments are being proposed to the First Circuit's Local Rules and Internal Operating Procedures. Separate notices invite comments on those amendments.

The Court of Appeals invites public comments on the proposed administrative order. Comments should be submitted by July 17, 2009, and addressed to:

Office of the Clerk
U.S. Court of Appeals for the First Circuit
United States Courthouse
1 Courthouse Way, Suite 2500
Boston, Massachusetts 02210

May 18, 2009

Richard Cushing Donovan, Clerk

**UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

ADMINISTRATIVE ORDER REGARDING
CASE MANAGEMENT/ELECTRONIC CASE FILES SYSTEM (“CM/ECF”)
ENTERED []

The United States Court of Appeals for the First Circuit adopts the following provisions to govern the electronic filing of documents in cases before the court. Effective October 13, 2009 [projected date], the court will permit filings to be made by means of the court’s electronic filing system. Effective January 1, 2010 [projected date], use of the electronic filing system is mandatory for all attorneys filing in this court, unless they are granted an exemption, and is voluntary for all pro se litigants proceeding without counsel. These provisions may be amended from time to time, with or without prior notice, by further order of the court. The clerk may make changes to the procedures for electronic filing to adapt to changes in technology or to facilitate electronic filing. Any changes to procedures will be posted on the court’s website. The court may deviate from these procedures in specific cases if deemed appropriate in the exercise of its discretion.

Rule 1 – Scope of Electronic Filing

Except as otherwise prescribed by local rule or order, all cases will be assigned to the court’s electronic filing system. Upon motion and a showing of good cause, the court may exempt an attorney from the provisions of this Rule and authorize filing by means other than use of the electronic filing system. After January 1, 2010 [projected date], all documents filed by counsel must be filed electronically using the electronic filing system unless counsel obtains an exemption, except for the following types of documents, which must be filed only in paper form:

- a. documents initiating cases, including for example, petitions for review, petitions for permission to appeal, applications to enforce an agency order, petitions for a writ of mandamus or prohibition, and applications for leave to file a second or successive petition for relief pursuant to 28 U.S.C. §2254 or §2255;
- b. any document filed before a case is docketed by the court;
- c. motions to seal;
- d. sealed, ex parte, or otherwise non-public documents, including for example, pre-sentence reports and statements of reasons in a judgment of criminal conviction;
- e. appendices to briefs;
- f. documents exceeding 5 megabytes; and
- g. vouchers filed in accordance with the Criminal Justice Act, 18 U.S.C. §3006A, and other documents relating to compensation and reimbursement for representation and for ancillary services and expenses.

Although briefs must be filed electronically after January 1, 2010 [projected date], paper copies of briefs are still required. The clerk's office will review the electronically filed brief and, if the brief is compliant with federal and local rules, will send a notification requiring the

attorney or party filing electronically ("ECF Filer") to file nine identical paper copies so that they are received by the court within five days of the notification.

Otherwise, if a document is filed electronically using the court's electronic filing system, paper copies of the document should not be filed unless specifically requested by the clerk. The clerk may direct the ECF Filer to provide the court with paper copies of electronically filed documents, or with an identical electronic version of any paper document previously filed in the same case by that filer, in a format designated by the court.

Documents must be formatted for electronic filing by converting the original word processing document into Portable Document Format ("PDF") (resulting in what is referred to as a "native PDF" or "text PDF"). A scanned image PDF is acceptable only if the original word processing document is unavailable.

Rule 2 – Eligibility, Registration, Passwords

Attorneys who practice in this court must register as ECF Filers. Registration is required to obtain a login and password for use of the electronic case filing system. Attorneys and pro se litigants may register at www.ca1.uscourts.gov. Before registering, ECF Filers must complete the computer-based training modules titled Filing An Appearance of Counsel, Filing a Motion, Filing a Response, and Filing a Brief. ECF Filers should also familiarize themselves with the CM/ECF User's Guide. The computer-based training modules and the CM/ECF User's Guide, together with other training materials concerning electronic filing in the First Circuit, including Frequently Asked Questions, are available on the court's website at www.ca1.uscourts.gov.

A party to a pending case who is not represented by an attorney may, but is not required to, register as an ECF Filer for purposes of that case. If a pro se party retains an attorney, the attorney must advise the clerk by filing an appearance form and, after January 1, 2010 [projected date], must also register as an ECF Filer if he or she has not already done so.

Registration as an ECF Filer constitutes consent to electronic service of all documents as provided in these rules and in the Federal Rules of Appellate Procedure. All ECF Filers have an affirmative duty to inform the clerk immediately of any change in their e-mail address. Any changes to an ECF Filer's contact information, including physical address, telephone, fax number or e-mail address, should be made through the PACER system, which can be accessed at <http://pacer.psc.uscourts.gov>.

ECF Filers agree to protect the security of their passwords and immediately notify the PACER Service Center and the clerk if they learn that their password has been compromised. ECF Filers may be sanctioned for failure to comply with this provision. In addition to other sanctions imposed by the court, the clerk may terminate without notice the electronic filing privileges of any ECF Filer who uses the electronic filing system inappropriately.

Rule 3 – Consequences of Electronic Filing

Electronic transmission of a document to the electronic filing system in compliance with these rules, together with the transmission of a Notice of Docket Activity from the court, constitutes filing of the document under the Federal Rules of Appellate Procedure and the local rules of this court, and constitutes entry of the document on the docket kept by the clerk under Fed. R. App. P. 36 and 45(b). If leave of court is required to file a document and the document may be filed electronically under Rule 1 of this Order, both the motion and document at issue should be submitted electronically. If leave is granted, the docket will so reflect.

Before filing a document with the court, an ECF Filer must verify its legibility and completeness. When a document has been filed electronically, the official record is the electronic document stored by the court. Except in the case of documents first filed in paper form and subsequently submitted electronically, an electronically filed document is deemed filed at the date and time stated on the Notice of Docket Activity from the court. Unless otherwise required by statute, rule, or court order, filing must be completed by 11:59 pm Eastern Time to be considered timely filed that day.

Rule 4 – Service of Documents by Electronic Means

The Notice of Docket Activity that is generated by the court's electronic filing system constitutes service of the filed document on all ECF Filers. The system identifies which parties in a particular case are ECF filers. Parties who are not registered as ECF Filers must be served with a copy of any electronically filed document in some other way authorized by Fed. R. App. P. 25(c)(1). Similarly, a document filed in paper form pursuant to Rule 1 of this Order must be served using an alternate method of service prescribed by Fed. R. App. P. 25(c)(1).

The Notice of Docket Activity does not replace the certificate of service required by Fed. R. App. P. 25(d). ECF Filers must include certificates of service with any electronically filed document which state whether the parties being served are ECF Filers being served electronically by the Notice of Docket Activity or whether they are being served using an alternate method of service permitted by Fed. R. App. P. 25(c)(1), and, if so, which method. The certificate must also provide the other information required by Fed. R. App. P. 25(d)(1).

Rule 5 – Entry of Court-Issued Documents

Except as otherwise provided by local rule or court order, all public orders, opinions, judgments, and proceedings of the court in cases assigned to the electronic filing system will be filed in accordance with these rules, which will constitute entry on the docket kept by the clerk under Fed. R. App. P. 36 and 45(b). Any order or document electronically issued by the court without the original signature of a judge or authorized court personnel has the same force and effect as if the judge or clerk had signed a paper copy of the order.

Rule 6 – Attachments and Exhibits to Electronically Filed Documents

All documents referenced as exhibits or attachments to an electronically filed document must also be filed electronically, unless the court permits or requires traditional paper filing. An ECF Filer must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. The court may require parties to file additional excerpts or the complete document. This Rule does not apply to appendices to briefs. See Rule 1.e of this Order.

Rule 7 – Sealed Documents

As required by Rule 1 of this Order, sealed documents and motions for permission to file a document under seal should be filed only in paper form. Sealed documents must be filed in compliance with 1st Cir. R. 11.0(c) and 1st Cir. R. 30.0(f). If an entire case is sealed, all documents in the case are considered sealed unless the court orders otherwise or, in the case of a court order, opinion, or judgment, the court releases the order, opinion or judgment for public dissemination.

Rule 8 – Retention Requirements

Electronically filed documents which require original signatures other than that of the ECF Filer must be maintained in paper form by the ECF Filer until issuance of the mandate (or entry of the final order, in a case in which no mandate will issue) or until such later date as the court prescribes. Upon request by the court, ECF Filers must provide original documents for review.

Rule 9 – Signatures

The user login and password required to submit documents to the electronic filing system serve as the ECF Filer's signature on all electronic documents filed with the court. They also serve as a signature for purposes of the Federal Rules of Appellate Procedure, the local rules of court, and any other purpose for which a signature is required in connection with proceedings before the court. The name of the ECF Filer under whose login and password the document is submitted must be preceded by an "s/" and typed in the space where the signature would otherwise appear. No ECF Filer or other person may knowingly permit or cause to permit an ECF Filer's login and password to be used by anyone other than an authorized agent of the ECF Filer.

The filer of any electronically filed document requiring multiple signatures (for example, stipulations) must list thereon all the names of other signatories by means of an "s/ [name]" block for each. By submitting such a document, the ECF Filer certifies that each of the other signatories has expressly agreed to the form and substance of the document, and that the ECF Filer has their authority to submit the document electronically. In the alternative, the ECF Filer may submit a scanned document containing all necessary signatures. If any person objects to the

representation of his or her signature on an electronic document as described above, he or she must, within 10 calendar days of the electronic filing, file a notice setting forth the basis of the objection.

Rule 10 – Notice of Court Orders and Judgments

Immediately upon the entry of a public order, opinion or judgment in a case assigned to the electronic filing system, the clerk will electronically transmit a Notice of Docket Activity to ECF Filers in the case. Electronic transmission of the Notice of Docket Activity constitutes the notice and service of the order, opinion, or judgment required by Fed. R. App. P. 36(b) and 45(c). The clerk must give notice in paper form to a person who has not consented to electronic service in accordance with the Federal Rules of Appellate Procedure.

Rule 11 – Technical Failures

An ECF Filer whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

Rule 12 – Privacy Protections and Public Access

Filers, whether filing electronically or in paper form, must refrain from including or must redact certain personal data identifiers from all documents filed with the court whenever such redaction is required by Fed. R. App. P. 25(a)(5). The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The clerk will not review each pleading for compliance with this rule.

Rule 13 – Hyperlinks

Electronically filed documents may contain hyperlinks. Hyperlinks may not be used to link to sealed or restricted documents. Hyperlinks to cited authority may not replace standard citation format. Complete citations must be included in the text of the document. A hyperlink, or any site to which it refers, will not be considered part of the record. Hyperlinks are simply convenient mechanisms for accessing material in a document. The court accepts no responsibility for the availability or functionality of any hyperlink, and does not endorse any product, organization, or content at any hyperlinked site, or at any site to which that site might be linked.