

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

MARGARET CARTER
CLERK

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

**NOTICE OF ADOPTION OF AMENDMENTS TO LOCAL RULE 25.0,
LOCAL RULE 11.0 AND INTERNAL OPERATING PROCEDURE VI.**

The United States Court of Appeals for the First Circuit previously provided notice of proposed amendments to Local Rule 25.0, Local Rule 11.0 and Internal Operating Procedure VI. No comments were received.

The court hereby provides notice that it has adopted the amendments to Local Rule 25.0, Local Rule 11.0 and Internal Operating Procedure VI. The effective date of the amendments is August 21, 2017. Amended Local Rule 25.0 will supersede the court's September 14, 2009 Administrative Order Regarding Case Management/Electronic Case Files System, which will no longer be in effect as of August 21, 2017. A copy of Local Rule 25.0, Local Rule 11.0 and Internal Operating Procedure VI, with the amendments incorporated, is attached.

August 16, 2017

/s/ Margaret Carter, Clerk

Local Rule 25.0. Electronic Case Filing System and Facsimile

(a) Electronic Case Filing. 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 non-incarcerated pro se litigants proceeding without counsel.

- (1) The clerk may make changes to the procedures for electronic filing to adapt to changes in technology or to facilitate electronic filing.
- (2) The court may deviate from these procedures in specific cases if deemed appropriate in the exercise of its discretion.
- (3) Documents must be formatted for electronic filing by converting the original word processing document into Portable Document Format ("PDF"). PDF images created by scanning paper documents do not comply with this rule. However, exhibits that are submitted as attachments to an electronically filed pleading may be scanned and attached if the filer does not possess a word-processing file version of the document
- (4) Completed PDF fillable forms must be scanned or "printed to PDF" in order to lock or "flatten" the form prior to filing the document in CM/ECF.

(b) Scope of Electronic Filing. Unless this court by rule or order prescribes otherwise, 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. Absent an exemption, all documents filed by counsel must be filed electronically using the electronic filing system with the exceptions below, which also apply to pro se litigants who have elected to use the electronic filing system.

(1) Paper Only Filings. The following documents must be filed only in paper form:

- (A) motions to seal;
- (B) sealed, ex parte, or otherwise non-public documents, including for example, pre-sentence reports and statements of reasons in a judgment of criminal conviction; and
- (C) appendices to briefs.

(2) Documents Initiating a Case. Documents that initiate a case in the court of appeals may be filed electronically or in paper, 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. While a Notice of Appeal initiates an appeal, it must be filed in the district court and, thus, is subject to the relevant district court's procedures governing electronic filing.

- (3) **Briefs.** Although a brief (including the addendum, required by Loc. R. 28.0) must be filed electronically, paper copies of briefs are still required to be filed. When a brief is filed electronically, it is deemed tendered. The clerk's office will then review the electronically tendered brief and, if the brief is compliant with federal and local rules, send a notification accepting the brief as filed and requiring the attorney or party filing electronically ("ECF Filer") to file nine identical paper copies so that they are received by the court within seven days of the notification. The clerk may shorten the period for filing paper copies of a brief if it becomes necessary in a particular case. At the time a brief is tendered electronically, it must be served on all other parties, as required by Federal Rules of Appellate Procedure 25(b) and 31(b). See Loc. R. 25.0(e). Parties do not need to serve the brief again on the other parties to the case when identical paper copies are filed with the court. Appendices must be filed and served in paper form at the time the electronic version of the brief is tendered for filing.
 - (4) **Criminal Justice Act Vouchers.** CJA 24 vouchers filed in accordance with the Criminal Justice Act, 18 U.S.C. §3006A, must be filed electronically using the court's electronic filing system. All other Criminal Justice Act vouchers must be submitted electronically using the court's CJA eVoucher system.
 - (5) **Copies of Filings.** Paper copies of electronically filed documents other than briefs (such as petitions for rehearing or rehearing en banc) are not required and 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.
- (c) **Eligibility and Registration.** 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 non-incarcerated pro se litigants may register at www.pacer.gov. A non-incarcerated 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 register as an ECF Filer if he or she has not already done so and file an appearance form.
- (1) **Consent to Service.** 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.
 - (2) **CM/ECF User's Guide.** Before filing an electronic document using the court's electronic filing system, ECF Filers should familiarize themselves with the CM/ECF User's Guide available on the court's website at www.ca1.uscourts.gov.

- (3) **Duty to Update Registration Information.** An ECF Filer has an affirmative duty to keep the filer's primary email address and any additional email addresses associated with the filer's account updated at all times. Any changes to an ECF Filer's contact information, including name, physical address, telephone, fax number or e-mail addresses, should be made through the PACER Service Center, which can be accessed at www.pacer.gov.
 - (4) **Password and Login Protection.** ECF Filers agree to protect the security of their logins and passwords. An ECF Filer shall immediately notify the PACER Service Center and the clerk if the filer learns, or has reason to suspect, that the filer's login or 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.
- (d) **Consequences of Electronic Filing.** Electronic transmission of a document via 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).
- (1) **Leave to File.** If leave of court is required to file a document and the document may be filed electronically under Loc. R. 25.0(b), both the motion and the subject document should be submitted electronically. If leave is granted, an order will issue accepting the filing for docketing.
 - (2) **Legibility.** Before filing a document with the court, an ECF Filer must ensure its legibility and completeness.
 - (3) **Time Filed.** 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 midnight in the time zone of the circuit clerk's office in Boston to be considered timely filed that day.
 - (4) **Failure to Electronically File a Document.** ECF Filers are advised that they should contact the clerk's office if they transmit a document via the electronic filing system but do not receive a Notice of Docket Activity. If a Notice of Docket Activity was not transmitted by the court, the ECF Filer's filing attempt failed and the document was not filed. If the filer was attempting to file a document initiating a case and does not receive electronic confirmation that the submission was received by the court, then the ECF Filer's filing attempt failed and the document was not filed.
- (e) **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.

- (1) **Service on Paper Recipients.** The court's electronic filing 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 Loc. R. 25.0(b)(1) must be served using an alternate method of service prescribed by Fed. R. App. P. 25(c)(1). However, paper copies of briefs filed and served electronically do not need to be served again on the parties to the case when paper copies of the briefs are filed with the court.
 - (2) **Certificate of Service.** The Notice of Docket Activity does not replace the certificate of service required by Fed. R. App. P. 25(d). ECF Filers must include a certificate of service with any electronically filed document stating 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).
- (f) **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. Orders also may be issued as “text-only” entries on the docket, without an attached document. Such orders are official and binding.
- (g) **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 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 Loc. R. 25.0(b)(1).
- (h) **Sealed Documents.** As required by Loc. R. 25.0(b)(1), 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 Loc. R. 11.0(c) and Loc. 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.
- (i) **Retention Requirements.** Electronically filed documents that require original signatures other than that of the ECF Filer must be maintained in paper form by the ECF Filer until final disposition of the case. For purposes of this rule, a disposition is not final until the time for filing a petition for a writ of certiorari has expired, or, if a petition for a writ of certiorari is filed, until the Supreme Court disposes of the matter, and, if a remand is ordered, the case is

finally resolved. Upon request by the court, ECF Filers must provide original documents for review.

- (j) **Signatures.** The user login and password required to submit documents via 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.
 - (1) **Submission by Signatory.** 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. ECF Filers are reminded that pursuant to Loc. R. 25.0(c)(4), a filer must immediately notify the PACER Service Center and the clerk if the filer learns, or has reason to know, that the filer's login or password has been compromised.
 - (2) **Multiple Signatures.** 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 the authority to submit the document electronically. Notwithstanding Loc. R. 25.0(a)(3), the ECF Filer may in the alternative scan and submit the part of the 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 14 days of the electronic filing, file a notice setting forth the basis of the objection.
- (k) **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, a Notice of Docket Activity will be electronically transmitted to the 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 will give notice of any order, opinion, or judgment required by Fed. R. App. P. 36(b) and 45(c) in paper to any person who has not consented to electronic service.
- (l) **Technical Failures.** An ECF Filer whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.
- (m) **Privacy Protections and Public Access.** Filers, whether filing electronically or in paper form, shall refrain from including or shall 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 any document for compliance with this rule. Filers are advised that it is the experience of this court that failure to comply with redaction requirements is most apt to occur in attachments, addenda, or appendices, and, thus, special attention should be given to such documents.

- (n) **Hyperlinks.** Electronically filed documents may contain hyperlinks except as stated herein. 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.
- (o) **Facsimile.** The Clerk of Court is authorized to accept for filing papers transmitted by facsimile equipment in situations determined by the Clerk to be of an emergency nature or other compelling circumstances, subject to such procedures for follow-up filing of electronic or paper copies, as the Clerk may from time to time specify.

Local Rule 11.0. Transmission of the Record, Sealed Documents

- (a) **Duty of Appellant.** In addition to an appellant's duties under Fed. R. App. P. 11(a), it is an appellant's responsibility to see that the record, as certified, is complete.
- (b) **Transmission of the Record.** The district court will not transmit the full record except upon request of the circuit clerk. Rather, the district court will transmit to the circuit clerk electronically a copy of the notice of appeal, the order(s) being appealed, and a certified copy of the district court docket report in lieu of transmitting the entire record. Sealed documents will not be included in this abbreviated electronic record. Rather, any sealed documents or sealed docket reports/entries will be transmitted to the circuit clerk in hard copy whether or not electronically available. In addition, any papers and exhibits which are not electronically available will also be transmitted to the circuit clerk. The entire electronic district court record is available to the court of appeals whether or not individual documents are transmitted as part of the abbreviated electronic record or later supplemented.
- (c) **Sealed Materials.**

 - (1) **Materials Sealed by District Court or Agency Order.** The court of appeals expects that ordinarily motions to seal all or part of a district court or agency record will be presented to, and resolved by, the lower court or agency. Motions, briefs, transcripts, and other materials which were filed with the district court or agency under seal and which constitute part of the record transmitted to the court of appeals shall be clearly labeled as sealed when transmitted to the court of appeals and will remain under seal until further order of court.
 - (2) **Motions to Seal in the Court of Appeals.** In order to seal in the court of appeals materials not already sealed in the district court or agency (e.g., a brief or unsealed portion of the record), a motion to seal must be filed in paper form in the court of appeals; parties cannot seal otherwise public documents merely by agreement or by labeling them "sealed." A motion to seal, which should not itself be filed under seal, must explain the basis for sealing and specify the desired duration of the sealing order. If discussion of confidential material is necessary to support the motion to seal, that discussion shall be confined to an affidavit or declaration, which may be filed provisionally under seal. A motion to seal may be filed before the sealed material is submitted or, alternatively the item to be sealed (e.g., the brief) may be tendered with the motion and, upon request, will be accepted provisionally under seal, subject to the court's subsequent ruling on the motion. Material submitted by a party under seal, provisionally or otherwise must be stamped or labeled by the party on the cover "FILED UNDER SEAL." If the court of appeals denies the movant's motion to seal, any materials tendered under provisional seal will be returned to the movant. Motions to seal or sealed documents should never be filed electronically. See Loc. R. 25.0.
 - (3) **Limiting Sealed Filings.** Rather than automatically requesting the sealing of an entire brief, motion, or other filing, litigants should consider whether argument relating to sealed materials may be contained in separate supplemental brief, motion, or filing, which may then be sealed in accordance with the procedures in subsection (2).

(d) References to Sealed Materials.

- (1) Records or materials sealed by district court, court of appeals, or agency order shall not be included in the regular appendix, but may be submitted in a separate, sealed supplemental volume of appendix. The sealed supplemental volume must be clearly and prominently labeled by the party on the cover “FILED UNDER SEAL.”
- (2) In addressing material under seal in an unsealed brief or motion or oral argument counsel are expected not to disclose the substance of the sealed material and to apprise the court that the material in question is sealed. If the record contains sealed materials of a sensitive character, counsel would be well advised to alert the court to the existence of such materials and their location by a footnote appended to the “Statement of Facts” caption in the opening or answering brief.

Internal Operating Procedure VI. Briefs and Appendices

- A. General.** The court's website, www.ca1.uscourts.gov, contains guidelines and a checklist to assist counsel in preparing briefs. Counsel are advised that any brief that does not conform to the requirements of the rules may be rejected. For information regarding electronic document filing pursuant to the court's electronic filing system, see Loc. R. 25.0, a copy of which is available on the court's website. Electronic filing is permitted after October 13, 2009 and is required for all attorney filings after January 1, 2010.
- B. Modifications.** The following modifications of the Fed. R. App. P. apply in the First Circuit:
- 1) One copy of the brief or petition must be filed electronically or on a computer generated disk. See Local Rule 32.0.
 - 2) Only 10 copies, including the disk or electronic filing, need be filed.
- C. Deferred Appendix.** Note the Local Rules of this Court do not provide for the proceeding on a deferred appendix pursuant to Fed. R. App. P. 30(c). If special leave to proceed under this method is sought, and the Court grants such leave, the leave will be conditioned upon a shorter time schedule than the Fed. R. App. P. generally allow so that the processing of the appeal will not take any longer time than it would under the regular procedure.
- D. Defaults.** If the appellant fails to file the brief and appendix on time, the Clerk is authorized to enter an order dismissing the appeal, and when an appellee is in default as to filing a brief, the appellee will not be heard at oral argument. The party in default may remove the default by showing special circumstance justifying the failure to comply. Any motion to set aside a dismissal should be filed within fourteen days. See Local Rule 45.0.