

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

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NOTICE OF PROPOSED AMENDMENT TO LOCAL RULE 25.0

The United States Court of Appeals for the First Circuit hereby provides notice that it proposes the attached amendment to Local Rule 25.0. Additions are noted in *italic* print; deletions are noted in ~~strikeout~~ print. An explanation for the proposed amendment follows.

Local Rule 25.0 is being amended to incorporate the text of the court's September 14, 2009 Administrative Order Regarding Case Management/Electronic Case Files System ("CM/ECF"). If the proposed amendments are adopted, they will supersede the administrative order, which will no longer be in effect.

Aside from some stylistic changes necessitated by the incorporation of the text of the order into the local rules, there are some minor changes to reflect the implementation of CJA eVoucher and to permit electronic filing of case initiating documents, such as petitions for review and petitions for a writ of mandamus.

The Court of Appeals invites public comment on the proposed amendment. Comments should be received by **August 10, 2017** 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, MA 02210

July 11, 2017

/s/ Margaret Carter, Clerk

Local Rule 25.0. Electronic Case Filing System and Facsimile

- (a) **Electronic Case Filing.** Pursuant to Fed. R. App. P. 25(a)(2)(D) and (e)(2), the court has established procedures for electronic filing of documents, with certain exceptions, and authorized electronic service of documents using the court's transmission equipment, as set forth in the Administrative Order Regarding Case Management/Electronic Case Files System and any amendments to that order. 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 ~~hard~~ paper copies, as the Clerk may from time to time specify.