

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE:

ELECTRONIC CASE FILING
POLICIES & PROCEDURES

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STANDING ORDER No. 17-3
Amending 05-6, 03-4, 03-1

ORDER

WHEREAS, rule 6(d) of the Federal Rules of Civil Procedure was amended to remove service by electronic means by Fed.R.Civ.P.5(b)(2)(E) from the modes of service that allow three days to act after being served; and

WHEREAS, both the Electronic Case Filing Policies and Procedures adopted by Standing Order 03-1 and the Middle District of Pennsylvania ECF User Manual contain the additional three day response language;

IT IS HEREBY ORDERED THAT: The Electronic Case Filing Policies and Procedures adopted by Standing Order 03-1 and the ECF User Manual be amended in accordance with the foregoing to remove reference to adding three days to respond to service by electronic means in accordance with Fed.R.Civ.P.6(d).



Christopher C. Conner, Chief Judge
Middle District of Pennsylvania

Dated: April 20, 2017

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ELECTRONIC CASE FILING POLICIES AND PROCEDURES

1. Definitions.

- 1.1 “Electronic Filing System” refers to the court’s automated system that receives and stores documents filed in electronic form. The program is part of the CM/ECF (Case Management/Electronic Case Files) software which was developed for the Federal Judiciary by the Administrative Office of the United States Courts.
- 1.2 “Filing User” is an individual who has a court-issued login and password to file documents electronically.
- 1.3 “Notice of Electronic Filing” is a notice automatically generated by the Electronic Filing System at the time a document is filed with the system, setting forth the time of filing, the name of the party and attorney filing the document, the type of document, the text of the docket entry, the name of the party and/or attorney receiving the notice, and an electronic link (hyperlink) to the filed document, which allows recipients to retrieve the document automatically.
- 1.4 “PACER” (Public Access to Court Electronic Records) is an automated system that allows an individual to view, print and download court docket information over the internet.
- 1.5 “PDF” refers to Portable Document Format. A document file created with a word processor, or a paper document which has been scanned, must be converted to portable document format to be filed electronically with the court. Converted files contain the extension “.pdf”.
- 1.6 “Proposed Order” is a draft document submitted by an attorney for a judge’s signature. A proposed order shall accompany a motion or other request for relief as an electronic attachment to the document.
- 1.7 “Technical Failure” is defined as a malfunction of court owned/leased hardware, software, and/or telecommunications facility which results in the inability of a Filing User to submit a filing electronically. Technical failure does not include malfunctioning of a Filing User’s equipment.

2. Scope of Electronic Filing.

All civil, criminal and miscellaneous cases shall be assigned to the Electronic Filing System. Except as expressly provided herein or by order of court, or in exceptional circumstances including technical failures, a Filing User shall electronically file all documents required to be filed with the court.

The filing of initial papers may be accomplished either electronically under procedures outlined in the court's ECF User Manual or traditionally on paper. In a case removed to the federal court, parties are required to provide electronic copies of all documents previously filed in the state court. Service of the summons and complaint must be made under Federal Rule of Civil Procedure 4.

An attorney who is not a Filing User must show to the chief judge good cause to file and serve pleadings and other papers in the traditional manner. A party who is not represented by counsel may file papers with the clerk in the traditional manner, but is not precluded from filing electronically.

3. Eligibility, Registration, Passwords.

An attorney admitted to the Bar of this court, including an attorney admitted *pro hac vice*, may register as a Filing User by completing the prescribed registration form (See Exhibit A) and submitting it to the clerk. Registration as a Filing User constitutes consent to electronic service of all documents as provided in this order in accordance with the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

A person who is a party to an action who is not represented by an attorney may register as a Filing User in the Electronic Filing System solely for purposes of the action. If during the course of the action the person retains an attorney who appears on the person's behalf, the attorney must advise the clerk to terminate the person's registration as a Filing User upon the attorney's appearance.

When registering, an individual must have an established PACER account and certify that ECF training has been completed. An individual may register more than one Internet e-mail address. Once the registration is processed by the clerk, the Filing User will receive notification of the user login and password. A Filing User shall protect the security of the User's password and immediately notify the clerk if the Filing User learns that the password has been compromised.

Once registration is complete, a Filing User may not withdraw from participation in the Electronic Filing System except by leave of court.

4. Consequences of Electronic Filing.

Electronic transmission of a document to the Electronic Filing System in accordance with this order, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Local Rules of this court, and constitutes entry of the document on the docket kept by the clerk under Fed.R.Civ.P. 58 and 79, and Fed.R.Crim.P. 49 and 55.

When a document has been filed electronically, the official record of that document is the electronic recording as stored by the court, and the filing party is bound by the document as filed. A document filed electronically is deemed filed on the date and time stated on the Notice of Electronic Filing from the court.

The fact that a party files a document electronically does not alter the filing deadline for that document. Electronic filing must be completed before midnight Eastern time in order to be considered timely filed that day.

5. Entry of Court Orders and Related Papers.

A document entered or issued by the court will be filed in accordance with this Order and such filing shall constitute entry on the docket kept by the clerk under Fed.R.Civ.P. 58 and 79, and Fed.R.Crim.P. 55.

All signed orders will be filed electronically by the court or court personnel. An order filed electronically without the original signature of a judge shall have the same force and effect as if the judge had affixed a signature to a paper copy of the order and the order had been entered on the docket in a conventional manner.

A Filing User submitting a document that requires a judge's signature shall submit the document as an electronic attachment to a motion or other request for relief in accordance with the procedure for a "Proposed Order" as outlined in the court's ECF User Manual.

6. Notice of Court Orders and Judgments.

Immediately upon the entry of an order or judgment in an action, the clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed.R.Civ.P. 77(d) and Fed.R.Crim.P. 49(c). The clerk must give notice in paper form to a person who has not consented to electronic service.

7. Attachments and Exhibits.

A Filing User must submit in electronic form all documents referenced as exhibits or attachments in accordance with the court's ECF User Manual, unless otherwise ordered by the court. A Filing User shall 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. Filing Users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are directly germane.

8. Filing of Documents Under Seal.

According to Local Rule LCrR 49, no document shall be filed under seal unless authorized by an order of court. A motion to file a document under seal shall be filed on paper and contain no description or identification of the document for which the sealing order is sought or statement of reasons why the filing of the document under seal should be authorized. The Rule sets forth the procedure for presenting the document(s) which are the subject of the motion to seal. Accordingly, the following documents are to be presented to the clerk in paper form in a sealed envelope marked with the case number, case caption and the descriptive label of "Documents pending sealing decision:"

- (a) the document(s) for which the sealing order is sought,
- (b) a statement of the legal and factual justification for the sealing order that is being sought, and
- (c) a proposed form of order

LCrR 49(c)(3) sets forth the following procedure for documents authorized to be filed under seal by an existing court order:

A document authorized to be filed under seal by an existing court order shall be filed on paper accompanied by the court order authorizing it to be filed under seal and submitted in a sealed envelope marked with the case number, case caption and the words "sealed document."

The order of the court authorizing the filing of documents under seal may be filed electronically, unless prohibited by law.

9. Special Filing Requirements and Exceptions.

9.1 Special Filing Requirements

The documents listed below shall be presented for filing on paper:

Sealed
In Camera
Confidential Agreements
Ex Parte
Qui Tam Cases

9.2 Exceptions

9.2.1. Permissive Exceptions

The following documents may be excluded from the Electronic Filing System and filed solely on paper:

ANY DOCUMENT WHICH CONTAINS MORE THAN 200 PAGES.

9.2.2 Mandatory Exceptions

The following documents are excluded from the Electronic Filing System and shall be filed solely on paper:

ADMINISTRATIVE RECORDS IN SOCIAL SECURITY CASES

GRAND JURY MATTERS:

The following documents are examples of grand jury matters:

- 1) Minute Sheets of Swearing in and empanelment;
- 2) Grand Jury Returns;
- 3) Voting Slips;
- 4) Order appointing alternate juror (existing juror requests to be excused from grand jury for medical or some other reason);
- 5) Motions to quash subpoenas and orders ruling on them;
- 6) Motions to enforce subpoenas and orders ruling on them;
- 7) Motions for immunity and orders ruling on them;
- 8) Motions for appointment of counsel and orders ruling on them.

WARRANTS ISSUED:

- 1) Arrest Warrants;
- 2) Seizure Warrants;
- 3) Search Warrants;
- 4) Pen Registers (Wiretap Orders);
- 5) Bench Warrants

PRE-INDICTMENT/PRE-INFORMATION:

- 1) Affidavits (These usually accompany criminal complaints and are signed by the federal agent). Federal agents include FBI, DEA, Attorney General Task Force, IRS.
- 2) Warrant issued by another district for a defendant residing in our district. The Rule 5 (arraignment) hearing is held in our district and then the paperwork is sent to other district on a Rule 40 Transfer.

JURY EMPANELMENT LISTS

10. Retention Requirements.

A document that is electronically filed and requires an original signature other than that of the Filing User must be maintained in paper form by counsel and/or the firm representing the party on whose behalf the document was filed until one year after all periods for appeals expire. Such papers in criminal cases shall be retained by the United States Attorney. On request of the court, said counsel must provide the original document for review.

11. Signatures.

The user login and password required to submit documents to the Electronic Filing System serve as the Filing User's signature on all electronic documents filed with the court. They serve as a signature for purposes of Fed.R.Civ.P. 11, all other Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, the Local Rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court.

Each document filed electronically must indicate in the caption that it has been electronically filed. An electronically filed document must include a signature block in compliance with Local Rule 5.2(b), and must set forth the name, address, telephone number, fax number, e-mail address, and the attorney's Pennsylvania or other state bar identification number, if applicable. When listing the identification number, the state's postal abbreviation shall be used as a prefix (e.g., PA12345, NY2243316). In addition, the name of the Filing User 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 Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

A document containing the signature of a defendant in a criminal case shall be electronically filed as a scanned document in PDF format that contains an image of the defendant's original signature. The Filing User is required to verify the readability of the scanned document before filing it electronically with the court.

A document requiring signatures of more than one party must be filed electronically either by: (1) submitting a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document; (3) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three business days after filing; or (4) in any other manner approved by the court.

12. Service of Documents by Electronic Means.

12.1 Service of Process

Fed.R.Civ.P. 5(b) and Fed.R.Crim.P. 49(b) do **not** permit electronic service of process for purposes of obtaining personal jurisdiction, i.e., Rule 4 service. Therefore, service of process must be effected in the traditional manner.

12.2 Other Types of Service:

12.2.1 Filing User

Upon the electronic filing of a pleading or other document, the court's ECF System will automatically generate and send a Notice of Electronic Filing to all Filing Users associated with that case. Transmission of the Notice of Electronic Filing constitutes service of the filed document.

The Notice of Electronic Filing must include the time of filing, the name of the party and attorney filing the document, the type of document, the text of the docket entry, and an electronic link (hyperlink) to the filed document, allowing anyone receiving the notice by e-mail to retrieve the document automatically. If the Filing User becomes aware that the Notice of Electronic Filing was not transmitted successfully to a party, or that the notice is deficient, i.e. the electronic link to the document is defective, the filer shall serve the electronically filed document by e-mail, hand, facsimile, or by first-class mail postage prepaid immediately upon notification of the deficiency of the Notice of Electronic Filing.

12.2.2 Individual who is not a Filing User

A Non-Filing User is entitled to receive a paper copy of any electronically filed document from the party making such filing. Service of such paper copy must be made according to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Local Rules.

12.3 Time to Respond Under Electronic Service

In accordance with Fed.R.Civ.P. 6(d) and Fed.R.Crim.P. 45(c), service by electronic means is not treated the same as service by mail for the purposes of adding three (3) days

to the prescribed period to respond. The three added days cannot be retained by consenting to service by electronic means.

13. Technical Failures.

The clerk shall deem the court's Electronic Case Filing Web Site to be subject to a technical failure if the site is unable to accept filings continuously or intermittently for more than one hour occurring after 12:00 noon (Eastern Time) that day. If a Filing User experiences technical failure, the document may be submitted to the court that day in an alternative manner, provided that it is accompanied by an affidavit of the Filing User's failed attempts to file electronically at least two times in one hour increments after 12:00 noon. The following methods of filing are acceptable as a result of a technical failure:

- 13.1 via electronic mail in a PDF attachment, sent to the e-mail address for technical failures listed in the ECF User Manual;
- 13.2 in person, by bringing the document to the clerk's office on paper;
- 13.3 through facsimile transmission to the clerk's office where the presiding judicial officer is stationed. When a Filing User subject to technical failure submits a document by fax, the document shall be filed electronically on the next business day. Please refer to the fax numbers listed in the ECF User manual.

The initial point of contact for a Filing User experiencing technical difficulty filing a document electronically shall be the court's ECF Help Desk at the toll free numbers listed in the ECF User Manual.

A Filing User who suffers prejudice as a result of a technical failure may seek appropriate relief from the court.

14. Public Access.

A person may retrieve information from the Electronic Filing System at the court's Internet site by obtaining a PACER login and password. A person who has PACER access may retrieve docket sheets and documents in civil cases other than **social security cases**, in which only counsel in the case may retrieve certain documents and for most criminal cases/documents filed on or after November 1, 2004, in conjunction with Judicial Conference Policies on Privacy and Electronic Public Access. Any case or document under seal shall not be available to the public through electronic or any other means.

14.1 Sensitive Information

As the public may access certain case information over the Internet through the court's Electronic Filing System, sensitive information should not be included in any document filed with the court unless such inclusion is necessary and relevant to the case. In accordance with Local Rule 5.2(d), if sensitive information must be included, the

following personal data identifiers must be partially redacted from the document in a civil or criminal case (except in a Social Security Case), whether it is filed traditionally or electronically: Social Security numbers to the last four digits, financial account numbers to the last four digits, dates of birth to the year and the names of minor children to the initials.¹

Note: In criminal case documents only, home addresses also must be redacted to the city and state.

In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers specified above may file in addition to the required redacted document: 1) a sealed and otherwise identical document containing the unredacted personal identifiers; or 2) a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its(their) place in the filing. All references in the case to the redacted identifiers included in the reference list will be construed to refer to the corresponding complete personal data identifier. The reference list must be filed under seal, and may be amended as of right.

The sealed unredacted version of the document or the sealed reference list shall be retained by the court as a part of the record.

In addition, caution must be exercised when filing documents that contain the following:

- 1) Personal identifying number, such as a driver's license number;
- 2) medical records, treatment and diagnosis;
- 3) employment history;
- 4) individual financial information; and
- 5) proprietary or trade secret information;

Additional items for criminal cases only:

- 6) information regarding an individual's cooperation with the government;
- 7) information regarding the victim of any criminal activity;
- 8) national security information; and
- 9) sensitive security information as described in 49 U.S.C. Section 114(s).

Counsel is strongly urged to share this information with all clients so that an informed decision about the inclusion of certain materials may be made. If a redacted document is filed, it is the sole responsibility of counsel and the parties to be sure that pleadings and other papers comply with the rules and orders of this court requiring redaction of personal identifiers. The clerk will not review each filing for redaction.

¹Documents in social security cases are excluded from the redaction requirement as they are not electronically available to the public over the Internet, pursuant to the privacy policy of the Judicial Conference of the United States.