

## Electronic Case Filing in U.S. District Court

### Introduction

On January 2, 2004, the U.S. District Court for the Western District of New York launched its Case Management/Electronic Case Filing System (“CM/ECF”) for virtually all civil and criminal cases in the District. Effective March 1, 2004, electronic filing was made mandatory by Order of Chief Judge Richard J. Arcara. The conversion to CM/ECF radically changes the Court’s procedures for handling case files, shifting the Court to a “paperless” file management and retention system, and shifting the responsibility for creating docket records from the Clerk’s Office staff to litigators and Judges’ Chambers.

The only cases and documents that are excluded from the electronic filing requirement are: Social Security cases, initial complaints, documents filed under seal, transcripts of proceedings, the state court records in *habeas corpus* proceedings, documents filed by *pro se* litigants, and affidavits in support of motions to withdraw as counsel.

Information about the Court’s electronic filing requirements, including the Administrative Procedures which govern the process, registration materials, and an on-line tutorial are available at the Court’s website: [www.nywd.uscourts.gov](http://www.nywd.uscourts.gov).

The Court converted to the new case management program in early October 2003, and devoted the last three months of 2003 to preparing for the electronic case filing system. At approximately the same time, the U.S. District Courts for the Northern, Eastern, and Southern Districts of New York also switched to electronic filing. The basic procedures are identical in all the districts;

however individual courts and judges have individualized procedures and requirements. Information concerning those court's procedures and requirements are available at their websites:

[www.nynd.uscourts.gov](http://www.nynd.uscourts.gov), [www.nyed.uscourts.gov](http://www.nyed.uscourts.gov), and [www.nysd.uscourts.gov](http://www.nysd.uscourts.gov).

## **Getting Started**

### **1. Registration**

Every attorney appearing in federal court is required to register as an electronic filer. Upon registration, attorneys are assigned a user name and password. (Attorneys are strongly encouraged to promptly change their passwords to ensure confidentiality.) Upon registration, the attorney must provide an email address that will be the address at which the attorney will receive service of electronic documents, including notices and orders from the Court. An attorney may designate numerous separate email addresses for notification purposes. Many attorneys have included email addresses of support staff as recipients of notifications.

The user name and password act as the attorney's electronic "signature." Using the user name and password, an attorney may electronically file documents 24 hours a day, seven days a week from any computer that meets the Court's technical requirements.

### **2. Technical Requirements**

In order to interface with the Court's hardware, attorneys and law firms require:

- A personal computer running a standard platform such as Windows or MacIntosh;
- A PDF-compatible word processor, such as WordPerfect or Word;
- Reliable internet service - broadband or datagrade communication speeds are recommended;
- Reliable internet email service;

- Netscape Navigator 4.6, 4.7 or 7, or Internet Explorer 5.5;
- Software to convert PDF files from word-processing documents, such as Adobe Acrobat, PDF Factory or WordPerfect; (Please note, the Court is currently running an earlier version of Adobe Acrobat than the version currently available for purchase. If you are using Acrobat Version 6, you must review the Court's notices concerning compatibility issues - on the web site under the link for CM/ECF Tutorial and Manual.)
- A document scanner for scanning images of documents that have not been created on the attorney's word processing system.

### **How Does it Work?**

Every document, after the initial complaint, that an attorney wishes to file in a case, must be submitted in electronic form as a .pdf document. (A common program that creates .pdf documents is Adobe Acrobat™.) The current editions of many sophisticated word processing programs (including Word™ and WordPerfect™) have the capacity to save a document generated in the program as a .pdf document. Documents created in an attorney's or law firm's word processing systems should be saved as .pdf documents. Documents that are not created by the attorneys (such as exhibits) must be scanned and saved as .pdf documents.

Once the document that is to be filed has been prepared and saved, the filer then logs onto the Court's web site, and selects the menu option that allows access to the CM/ECF system, and proceeds through a menu-driven interactive process that results in uploading of the document to the Court's system, and the creation of an electronic docket entry describing the newly filed document.

Upon successful filing and docketing of the document, the CM/ECF system generates a "notice

of electronic filing” that is emailed to all the attorneys of record who have appeared in the case, including the attorney who filed the document. The notice contains a hypertext link to the .pdf document itself. By clicking on the link, a recipient of the email can view the actual filed document. The document can be saved by the viewer on his or her local system.

The system allows each email recipient only one free “look” at the .pdf document. After receipt of the notice of electronic filing and the initial accessing of the hypertext link, the Court’s records of the documents are available only through the PACER (Public Access to Court Electronic Records) system for a nominal fee. Thus, it behooves litigators to save a copy of the electronic document the first time they look at it. PACER is managed by the Administrative Office of the U.S. Courts, and requires separate registration for access.

If any attorney does not have access to the Internet, the Clerk of Court will accept electronic documents for filing at the Clerk’s offices. Such documents must be presented to the clerk on a diskette in .pdf format.

### **Legal Issues and Other Concerns**

Many attorneys upon first learning of the electronic filing requirement have two questions: What about Rule 11’s requirement that every pleading, motion and other paper must be signed by an attorney of record? and “What about Rule 5’s service requirements?”

As noted above, the combination of user name and password constitute an attorney’s electronic “signature” for purposes of Rule 11. The 2001 amendments to Fed. R. Civ. P. Rules 5 and 6 include provisions for electronic service. Fed. R. Civ. P. Rule (b)(2)(D) permits service by electronic means, and provides that such service is complete upon transmission, provided the recipient has consented in

writing to receipt of electronic service. (The attorney's registration for electronic filing contains a statement formally consenting to receiving notice of filings pursuant to Rule 5(b).) Rule 6(e) now provides that the three-day grace period added to a party's time to react to service of a notice also applies to electronic notice.

Rule 5(b)(3) provides that service by electronic means "is not effective if the party making service learns that the attempted service did not reach the person to be served." In such cases, and in cases where counsel or parties are not registered with the system, paper copies of documents should be served in the traditional manner under Rule 5.

Because all filed documents are theoretically available to anyone with Internet access (via PACER), the Court's Administrative Procedures address concerns of confidentiality and authenticity of signatures. With the exception of criminal defendants, signatures of attorneys and parties on filed documents should be represented by conformed signatures ("s/name"), scanned signatures should not be uploaded to the CM/ECF system, and the attorney should retain the documents containing original signatures in his or her files. Additionally the Administrative Procedures provide for the redaction of several kinds of information, including minors' names, Social Security numbers, financial account numbers, and certain other personal information, including employment history and medical records. See U.S.D.C. W.D.N.Y. Administrative Procedure Guide § 2(m), on the Court's website. The Administrative Procedures provide for the paper filing, under seal, of documents containing such redacted information, where such information is necessary to the resolution of the issues before the Court. *Id.*

The Administrative Procedures also provide for the submission of proposed orders directly to

Chambers, via e-mail, in WordPerfect™ or Rich Text™ format. A list of e-mail addresses is provided in the Administrative Procedures.

The Judges of the District, like the litigators, are in the process of adapting to the CM/ECF system. Each Chambers is modifying its Individual Judges' Rules to address such issues as the necessity of submitting paper courtesy copies of filed documents to Chambers. At the time of this writing, Individual Judges' Rules are not yet available on the Court's website, although information will be placed on the website with the Administrative Guidelines in the foreseeable future. For the time being, it is essential that litigators contact Chambers directly to obtain guidance concerning an individual Judge's or Magistrate Judge's requirements relating to courtesy copies.

### **How Can I Get Help?**

In addition to the information available on the Court's web site, the Clerk's Office staff is available to provide assistance to individual attorneys concerning the CM/ECF system. Operations Supervisor, Jean Marie McCarthy, can be reached at 716-551-4211. She can answer questions and arrange for formal and informal training for individual attorneys. The Court can also provide on-site training at law offices or other locations for larger groups. Contact Ms. McCarthy at the above number, or at [jean\\_marie\\_mccarthy@nywd.uscourts.gov](mailto:jean_marie_mccarthy@nywd.uscourts.gov) for more information.

The Court is establishing a point of contact program, whereby registered users will be affirmatively notified by the Court of significant developments. One attorney per firm may register for the point of contact program, by sending a paper letter requesting to be added to the list to: Jeanne M. Spampata, Chief Deputy Clerk, U.S. Court, 68 Court Street, Buffalo, NY 14201.

Finally, the Erie County Bar Association and the Court have established an Attorney Liaison

Group which meets with Court personnel on a periodic basis to address concerns of the practicing bar and to assist the Court in accomplishing a smooth transition to electronic filing. The attorney members of the Group are: Anna Marie Richmond, Chair; Assistant Buffalo Corporation Counsel J. Richard Benitez; Scott DeLuca of Damon & Morey; Cheryl Smith Fisher of Magavern, Magavern & Grimm; Andrew Lipkind; First Assistant U.S. Attorney Kathleen M. Mehlretter; John G. Schmidt, Jr., of Phillips, Lytle, Hitchcock, Blaine & Huber; Assistant Attorney General Peter B. Sullivan, and Assistant County Attorney Kristin Klein Wheaton. Concerns and questions may also be addressed to any one of those individuals.

March 30, 2004

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