

ADMINISTRATIVE PROCEDURES FOR ELECTRONIC CASE FILING



UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF WEST VIRGINIA

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INTRODUCTION

To the extent that these Administrative Procedures conflict with the court's existing Local Rules, these Administrative Procedures for Electronic Case Filing take precedence. Further, the court or clerk may deviate from these Administrative Procedures in specific cases, without prior notice, if deemed appropriate in the exercise of discretion, considering the need for the just, speedy and inexpensive determination of matters pending before the court. The court may also amend these Administrative Procedures at any time without prior notice. Updates to these Administrative Procedures will be immediately posted to the court's web page at www.wvsd.uscourts.gov.



1. Definitions and Standards

- 1.1 **CM/ECF** refers to Case Management/Electronic Case Filing. This is the docketing and filing system used by the judiciary and by this court.
- 1.2 **Traditionally Filed Document** means a document or pleading presented to the court for filing in paper or other non-electronic, tangible format.
- 1.3 **Electronic Document** is an electronic version of information otherwise filed in paper form.
 - 1.3.1 An electronic document has the same legal effect as a paper document.
 - 1.3.2 An electronic document is considered timely if received by the court before midnight, local prevailing time/Eastern Time, on the date set as a deadline, unless the judge specifically requires another time frame. If time of day is of the essence, the assigned judge will order the document filed by a time certain.
- 1.4 **Electronic Filing** is the electronic transmission of a PDF (portable document format) by uploading the document directly from the filing user's computer into the electronic file via CM/ECF.
- 1.5 **Electronic File** is the official court record maintained electronically on the court's servers.
 - 1.5.1 The Clerk's Office shall not maintain a paper court file in any case commenced after the effective date of these procedures except as otherwise provided in these procedures.
 - 1.5.2 The official record shall include, however, any conventional documents or exhibits that cannot be electronically filed in accordance with these procedures.
 - 1.5.3 In criminal cases, the Clerk's Office will retain all original indictments and other charging instruments, plea agreements, executed pleas of guilty, and jury verdict forms after they have been scanned and uploaded to ECF. The electronic file, however, shall constitute the official record in the case.
- 1.6 **Filing User** is an individual who has a court-issued login and password to file documents electronically.



1.7 Portable Document Format or PDF is a type of document formatting which allows a document to be transmitted electronically without changing the document's appearance or layout. Anyone with a PDF reader may view the document, regardless of operating system, original design application or fonts.

1.7.1 A PDF Text document is a document converted from a word processing program directly into PDF format without the use of a scanner. **A PDF Text document is the preferred document for filing** because it is considerably smaller than a scanned document and is text searchable.

1.7.2 A PDF scanned document is a document converted to PDF by means of a document scanner. When scanning documents to be subsequently filed electronically, filing parties must configure their scanners at 300 ppi or higher. The filing party is responsible for the legibility of the scanned image. Scanning a document to PDF creates a file larger than a PDF text document and does not allow for text searches within the document. Note: Do not use a scanner's OCR setting as this can alter the scanned document.

1.7.3 Avoid scanning when possible. Use the **Insert Pages** function of Adobe Acrobat to combine scanned and unscanned PDF files into a single PDF whenever possible; e.g., when only the last page of a document contains an ink signature.)

1.8 Notice of Electronic Filing (NEF) is an e-mail verification generated by the CM/ECF system of the court's receipt of the electronic document, as well as the official notice of the filing to all other parties. The Notice includes the text of the docket entry, as well as a link to the filed document(s).

2. Scope of Electronic Filing

Subject to the exceptions set forth herein, effective May 1, 2006, all documents shall be filed electronically no matter when the case, civil or criminal, was originally filed.

3. Special Filing Requirements and/or Exceptions from Mandatory Electronic Filing

3.1 Documents Traditionally Filed

The following matters or documents shall not be filed electronically, but must be filed in the traditional manner or as otherwise directed:



3.1.1 Parties proceeding *pro se*.

3.1.1.1 **Incarcerated *pro se* filers** are not permitted to file electronically. They must file in the traditional manner.

3.1.1.2 **Non-prisoner *pro se* filers** may be permitted to file electronically only when permission of the court has been requested, and the court has granted such request by Order. If, during the course of the action, the non-prisoner *pro se* filer retains an attorney, the clerk shall terminate that person's registration upon the attorney's appearance.

3.1.2 Pre-indictment grand jury matters that are assigned miscellaneous action numbers by the clerk, e.g., Notices of Disclosure of Grand Jury materials in criminal investigations; applications for wiretaps; pen registers, or trap and trace; beeper applications for mobile tracking devices; applications under 18 U.S.C. § 2703, requiring production of certain records and precluding notice; and applications for *ex parte* orders to disclose returns and return information; as well as warrants, must be filed in the traditional manner.

3.1.3 Civil cases commenced under seal pursuant to statute (e.g., *qui tam* matters under the Federal Civil False Claims Act; refer to 31 U.S.C. §§ 3729-32 for more information) or sealed pursuant to Order shall be filed in accordance with Section 12 of these Procedures.

3.1.4 State court records may be filed on CD-ROM, or other method **approved by the clerk in advance**, containing the records in PDF, if not filed electronically via CM/ECF.

3.1.5 In accordance with the Local Rules of Procedure, parties shall not file discovery. However, discovery materials to be used in support of any motion, e.g., a motion to compel or for summary judgment, shall be filed electronically with the court as an attachment to the motion.

3.1.6 Some pleadings and papers require that additional parties to an action be added to the CM/ECF database before the registered attorney can electronically file a document. The filing party must provide the Clerk's Office with the case number and the complete name of the additional party as it will appear on the document to be filed at the following e-mail address:

WVSDdb_ecf@wvsd.uscourts.gov



Examples of pleadings that may add parties include:

Motion to Intervene
Motion to File Amicus Curiae Brief
Amended Complaints
Third Party Complaints
Answer by Underinsured Motorist

The Clerk's Office will notify the registered attorney via e-mail when the new party has been added to the CM/ECF database so that the document may be electronically filed in the appropriate case.

- 3.1.7 Materials that cannot be converted to PDF (e.g., videotape, audiotape, etc.) may be filed by delivering them directly to the Clerk's Office and following Section 14.9 of these Procedures.
- 3.1.8 Such other documents as the presiding judge may permit upon prior motion for good cause shown.

3.2 Documents Filed on Paper and Scanned

The following documents may be filed on paper and will be scanned into CM/ECF by the Clerk's Office:

- 3.2.1 The charging document in a criminal case, such as the complaint, indictment, or information.
- 3.2.2 Affidavits for search and arrest warrants and related papers.
- 3.2.3 Fed. R. Crim. P. 20 and Fed. R. Crim. P. 40 papers received from another court that are not transmitted electronically.
- 3.2.4 Any pleading or document in a criminal case containing the signature of a defendant, such as a bond, conditions of release, waiver of indictment or plea agreement, etc.
- 3.2.5 Petitions for violations of supervised release.



4. ***Pro Se* Cases**

Electronic filers in *pro se* cases must file all documents electronically, but must serve a copy of the documents on the non-electronic *pro se* parties by traditional means.

5. **Social Security Cases**

A plaintiff shall file a complaint to initiate an action to seek review of a final decision of the Commissioner pursuant to 42 U.S.C. § 405(g) by completing and filing the form “Complaint for Review of the Decision of the Commissioner of Social Security” posted on this court’s web site at www.wvsd.uscourts.gov.

In Social Security cases, Internet access to the complete file, including the administrative transcript, is available to counsel of record. Any other person may have electronic access to the full record at the public terminal in the Clerk’s Office. Remote access by anyone other than counsel of record is limited to the docket sheet, any opinion, order, judgment or other disposition of the court, or any report and recommendation classified by the court as an opinion for the purposes of the E-Government Act of 2002, or that is adopted by an order that is classified as an opinion.

Absent a showing of good cause, all documents, notices, Consents to Proceed before the United States Magistrate Judge, briefs, administrative records and orders in Social Security reviews filed in the District Court shall be filed and noticed electronically. The administrative record in Social Security cases must be filed in PDF by counsel using the event, **Social Security Transcript** or **Social Security Transcript – Supplemental**. However, counsel for the defendant must provide a paper copy of the Social Security transcript to the United States Magistrate Judge to whom the case is assigned or referred and to counsel for plaintiff.

6. **Login and Password; Registration**

6.1 **Login and Password**

Each attorney admitted to practice in the Southern District of West Virginia, including those admitted *pro hac vice*, must register for a CM/ECF login and password from the District Court. Before being issued a login, the attorney must successfully complete on-line or court-conducted training or attest that s/he has used CM/ECF in another U. S. District Court for a period of at least six months. The login and password permit the attorney to participate in the electronic retrieval and filing of pleadings and other papers. Users are subject to applicable PACER service fees.



- 6.1.1 No attorney shall knowingly permit or cause to permit his or her login and password to be used by anyone other than an authorized employee of his or her office.
- 6.1.2 The attorney shall be responsible for all documents filed with his or her password.
- 6.1.3 An attorney shall use his or her login and password to file documents in cases in which he or she is counsel of record. Each document must bear the electronic signature or traditional signature of the attorney under whose login and password the document is being filed.
- 6.1.4 The court will issue logins and passwords only to attorneys in good standing. To be in good standing, an attorney must meet the requirements within the Local Rules governing admission. The Court shall disable a registered attorney's login and password if the registered attorney fails to maintain active status as a member of the Bar of the Court or is suspended for disciplinary reasons.
- 6.1.5 In the event that a registered attorney has forgotten a password, then the attorney must contact the Clerk's Office to request that the account be reset. The Clerk's Office will send the attorney an e-mail message with the new login and password by e-mail only to the registered attorney.

6.2 Registration

- 6.2.1 Attorney Registration Form: To file electronically, each attorney must complete and sign an Attorney Registration Form for Electronic Filing. An attorney's full name on the Attorney Registration Form should correspond to the name in which an attorney is admitted to a state bar. Example: State Bar admitted name "Anthony Doe" should not be registered as "Tony Doe." The form is available on the court's web site at www.wvsd.uscourts.gov.
- 6.2.2 Attorneys may fax a copy of the Attorney Registration Form to 304/347-3007, but must mail the original Attorney Registration Form to the Clerk, U.S. District Court, at Post Office Box 2546, Charleston, WV 25329, or deliver the form to the public counter at the Clerk's Office at the Robert C. Byrd United States Courthouse, Suite 2400, 300 Virginia Street, East, Charleston, WV 25301.



- 6.2.3 The Clerk's Office will send the attorney an e-mail message with the assigned login and password.
- 6.2.4 After registering, attorneys must change their passwords once received. Logins, however, can only be changed by the Clerk's Office. If an attorney believes that the security of an existing password has been compromised and that a threat to CM/ECF exists, the attorney must change his or her password immediately. Instructions are posted on the court's web site. In addition, the attorney shall immediately notify the clerk by telephone of the suspected compromise to the password.
- 6.2.5 An attorney whose e-mail address, mailing address, telephone or fax number has changed from that of the original Attorney Registration Form shall timely file a Notice of Change of Attorney Information form available on the court's web site at www.wvwd.uscourts.gov in all cases affected by the attorney's move. If the attorney has no pending cases, s/he may file the Notice of Change of Attorney Information form with the Clerk's Office.
- 6.2.6 An attorney who is not a registered filing user who has co-counsel that is a registered filing user must execute an Attorney Registration Form for E-Mail Notification Only available on the court's web site at www.wvwd.uscourts.gov

7. Filing

7.1 General

Electronic transmission of a PDF document to CM/ECF in accordance with these Administrative Procedures, 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 the entry of the document on the docket kept by the Clerk's Office under Rules 58 and 79 of the Federal Rules of Civil Procedure and Rules 32, 49 and 55 of the Federal Rules of Criminal Procedure. E-mailing or faxing a document to the Clerk's Office shall not constitute "filing" of the document.

7.2 Filer Required to Maintain Certain Documents

Documents (a) that are electronically filed and (b) that require signatures, other than or in addition to that of the filers (e.g., affidavits), must be maintained in paper form



by the filer until two (2) years after all time periods for appeal expire and all appeals are final. At the request of the court, the filer must provide the documents for review.

8. Commencement of a Civil Action

A filing user may file a complaint, petition, notice of removal and other initiating documents by logging into the ECF system, selecting **Civil** on the main menu bar, and filing their documents into a “shell” case as fully set forth in the Electronic Case Filing User Manual.

8.1 General

The date the filing user completes the transaction to enter the initiating documents in the ECF system, as displayed on the resulting Notice of Electronic Filing, shall constitute the official filing date on the docket sheet for the record of that civil action. Filing users will not associate themselves as counsel in the “shell” case. With the exception of the complaint and notice of removal, all documents associated with a new case will be filed as attachments to the filing entry in the “shell” case.

Filing users are required to pay the filing fee through Pay.gov, except for:

- ▶ Cases in which the plaintiff seeks to proceed without prepayment of fees, thus the initiating documents must include a motion or application to proceed without prepayment of fees with an affidavit of the plaintiff in support thereof, and a proposed order granting the motion;
- ▶ Cases filed by a seaman pursuant to 28 U.S.C. § 1916, in which case there is no prepayment of fees; and
- ▶ Cases initiated by the United States of America or any of its agencies.

The filing fee is not a matter of form required by Rule, but a statutory requirement.

8.2 Original Complaint

When filing an original complaint, the filing user will select the event “Complaint with Civil Cover Sheet Attached” from the CV– Complaints and Other Initiating Documents category. Documents to be filed as attachments to the complaint and civil cover sheet include the proposed summons form(s) and, where appropriate, a



motion, affidavit and proposed order allowing the plaintiff to proceed without prepayment of fees.

8.3 Notice of Removal

When filing a notice of removal, the filing user will select the event “Notice of Removal with Civil Cover Sheet Attached” from the CV – Complaints and Other Initiating Documents category. Documents to be attached to the notice of removal include the civil cover sheet, all state court papers, the state court docket sheet, and, when appropriate, the answer to the complaint. If the removing party seeks to proceed without prepayment of fees, attachments should also include a motion, affidavit and proposed order allowing the plaintiff to proceed without prepayment of fees.

8.4 Clerk’s Office Follow-Up

After a filing user has completed the transaction for opening a new civil case, the Clerk’s Office will complete the full case opening process, including assignment of a civil action number, assignment to a judge, and uploading the case documents into the ECF system. If applicable, the Clerk’s Office will print and process the summons as stated in Section 9.2.2 of these Procedures.

9. Service

9.1 Service of Process

Rule 5(b) of the Federal Rules of Civil Procedure does not permit electronic service of process for purposes of obtaining personal jurisdiction. Therefore, service of process must be in compliance with Fed. R. Civ. P. 4.

9.2 Summons in a Civil Case

9.2.1 The party requesting the summons must prepare the summons form for each defendant. Each summons shall include the full style of the case from the complaint or petition.

9.2.2 The party may: (1) attach the proposed summons as an attachment to the complaint when filing a new civil action in the shell case established by this District to open new cases; or (2) using the proper **Summons Submitted (Proposed)** event in ECF after the case has been opened.



9.2.3 The Court will issue a signed and sealed summons and return to the requesting party via ECF through a Notice of Electronic Filing. The requesting party will be responsible for making sufficient copies of the summons and complaint for service as provided in Fed. R. Civ. P. 4.

9.3 Service of Other Electronically Filed Documents

When a document is filed electronically in accordance with these Administrative Procedures, CM/ECF shall generate and transmit a “Notice of Electronic Filing” to the filing attorney, any other attorney who is a filing user, and any person who has requested electronic notice in that case. A document filed electronically shall be deemed filed at the time and date stated on the Notice of Electronic Filing.

Registration as a participant in ECF shall constitute consent to electronic service of all documents in accordance with the Federal Rules of Civil and Criminal Procedure. If the recipient is a filing user, or has registered to be served via Notice of Electronic Filing (NEF), CM/ECF’s e-mailing of the NEF shall constitute service of the pleading or other paper and shall be deemed to satisfy the requirements of Fed. R. Civ. P. 5(b)(2), Fed. R. Civ. P. 77(d), and Fed. R. Crim. P. 49(b).

9.4 Certificate of Service

A certificate of service shall be made part of the main document in ECF unless it is the certificate of service for discovery documents or Rule 26 disclosures. The certificate of service for discovery documents is filed without the discovery document itself pursuant to L. R. Civ. P. 26.3. A certificate of service shall list all parties entitled to service or notice, and the manner in which service or notice was accomplished on each party. Sample language for both types of certificate of service are posted on the court’s web site at www.wvsd.uscourts.gov.

9.5 Service on Parties Not Registered for ECF

Filers are required to serve copies of any electronically filed pleading, document, or proposed order on parties not registered for ECF in accordance with the Federal Rules of Civil and Criminal Procedure. An electronic filer can view the NEF under the “Notice has been delivered by other means to:” section to determine if there are any case participants who have not received copies via ECF noticing.



9.6 Time to Respond Under Electronic Service or Otherwise

In accordance with Rule 6(d) of the Federal Rules of Civil Procedure, effective December 1, 2016, and Rule 45 of the Federal Rules of Criminal Procedure, when a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail), (D) (leaving with the clerk), or (F) (other means consented to), three days shall be added after the period would otherwise expire under Federal Rule 6(a). However, service by electronic means via the ECF system under Rule 5(b)(2)(E) does not permit the addition of three days to the prescribed period to respond.

9.7 Service of Sealed Filing

A sealed filing may or may not produce a Notice of Electronic Filing, depending upon the event code used. Service by the filer of **any** sealed documents by an alternate method is always required.

9.8 E-mail Notices to Attorneys

All attorneys of record who are e-filers will receive Notices of Electronic Filing. An attorney whose client(s) has/have been terminated from the case will continue to receive Notices of Electronic Filing for a case unless the attorney informs the court that the attorney does not wish to receive further notice of additional case filings or activities, including the final judgment. An attorney may use the Notice of Change of Attorney Information form available on the court's web site at www.wvsd.uscourts.gov to terminate and reactivate electronic service.

Attorneys must comply with the requirements of Southern District of West Virginia L. R. Civ. P. 83.4 and L. R. Cr. P. 44.4 for Termination of Representation. An attorney who has withdrawn from a case pursuant to those requirements will no longer receive Notices of Electronic Filing in that case.

9.9 E-mails with Notices of Electronic Filing Returned to the Court

In the event that an e-mail containing the Notice of Electronic Filing is returned to the Court as undelivered, the Clerk's Office will resend the e-mail only to those ECF filers who are primary participants in the case. The Clerk's Office does not monitor and will not resend bounced back e-mails to those persons who are registered as secondary recipients in the case.



10. Motion Practice

10.1 Submission of Motions and Responses as Separate Documents

Motions and responses **must** be filed as separate documents. For example, a cross-motion for summary judgment should never be combined with a response to a motion for summary judgment. It is critical that the cross motion be filed separately so that it can be properly linked to any subsequent responses, replies, notices and orders.

10.2 Filing a Memorandum or Brief

A memorandum or brief shall **not** be filed as an attachment to the motion. **The memorandum or brief shall be a stand-alone document electronically filed as a “Memorandum in Support” or “Brief in Support” or “Memorandum in Opposition” or “Brief in Opposition.”**

10.3 Attachments and Exhibits

This section applies to exhibits to documents being filed in CM/ECF and **not** to trial exhibits. Trial exhibits may be filed electronically only to the extent practicable.

10.3.1 Filing users must convert exhibits attached to documents to PDF unless the court permits conventional filing.

10.3.2 When filing exhibits in support of a motion, **the exhibits must be attached to the motion**, not to the memorandum in support of the motion.

11. Proposed Amended Pleadings and Documents

11.1 Proposed Amended Pleadings

When leave of court is sought for the filing of an amended pleading or document, such as an amended complaint or a reply brief, the proposed amended document must be electronically filed as an attachment to the motion. If the amended complaint does not accompany the motion, counsel must contact the Clerk’s Office to arrange for the filing of the amended complaint after entry of an order granting the motion.



11.2 Proposed Jury Instructions, Proposed Jury Verdicts, Proposed Special Interrogatories to the Jury and Proposed Voir Dire Questions

Proposed jury instructions, proposed jury verdicts, proposed special interrogatories to the jury and proposed voir dire questions shall be electronically filed via CM/ECF. Upon request, the presiding judge may require the filing user to submit these documents in standard word processing software via e-mail or as otherwise directed.

11.3 Proposed Bill of Costs

The proposed bill of costs shall be filed electronically in ECF using the docket event "Bill of Costs - Proposed."

12. Sealed Documents, Sealed Cases and Documents Presented *Ex Parte* or for *In Camera* Review

12.1 General

The filing of documents under seal is discouraged. In addition to these procedures, please refer to L. R. Civ. P. 26.4. Sealed document submission falls into two categories: (1) documents in SEALED CASES, and (2) SEALED DOCUMENTS in public cases.

When documents are ordered to be placed under seal, the Clerk will officially file the document.

An agreement of the parties does not allow the Clerk to file a document under seal without a court order.

12.2 Electronic Filing of Sealed Documents and Access

Sealed documents and sealed cases will be filed in electronic format except as otherwise provided in these procedures. Motions to seal and any accompanying proposed documents for sealing shall be considered lodged with the court pending a ruling on the sealing request. When a sealed document is filed, ECF may provide a Notice of Electronic Filing to all parties or an applicable party in the case. However, sealed documents are not available electronically or by any other means to the parties, attorneys or the public unless the court directs that access be given to an attorney of record or applicable party.



12.3 Paper Copy Requirement

Paper copies of any Reference List under the E-Government Act of 2002, any motion to seal, any response or reply to the motion to seal, any *ex parte* motion to seal, any motion to seal - *in camera*, and any proposed sealed documents submitted as attachments shall also be submitted to the presiding judicial officer in an envelope prominently marked as containing “PROPOSED DOCUMENTS FOR SEALING.”

12.4 Reference List Under E-Government Act of 2002

The Reference List required by the E-Government Act of 2002 containing the complete list of personal data identifiers is filed automatically under seal. Please refer to Section 20, Public Access and Privacy Concerns, of these Administrative Procedures, for further instruction. A Notice of Electronic Filing will be generated to all case participants upon filing of the Reference List, and the docket entry is public even though the sealed document is not.

12.5 Sealed Cases

12.5.1 When commencing an action either under seal pursuant to statute or by filing a motion to seal the case, the first document submitted by a party must be submitted in paper format.

12.5.2 All subsequent documents in a sealed case shall be filed electronically unless the party has received different instructions from the court.

12.5.3 All documents filed in a sealed case must be served in paper format. The court’s electronic noticing will not be available for sealed documents. Although an NEF may provide notice of a docket entry, service of the sealed documents is not effected through ECF.

12.6 Sealed Document Filing in Public Cases

12.6.1 Motion to Seal - General

If a party wishes to file a sealed motion or a sealed document, the filing user must file a motion to seal under the Restricted Access or Sealed Documents event category in CM/ECF, describe the motion or the document to be sealed and add the sealed document as an attachment to the motion. **The filing user should exercise caution when describing the sealed motion**



and any attachments as the docket text is PUBLIC even though the images of the motion to seal and any attachments are SEALED until the court rules on the merits of the motion to seal. A Notice of Electronic Filing will be generated to all ECF-registered case participants upon filing of the motion to seal containing the description the filing user entered into the event, but the sealed document will not be available for viewing.

12.6.2 Response or Reply to Motion to Seal

If a filing user files a sealed response or reply to the motion to seal, s/he must file a motion to seal using the event, Motion to Seal, under the Restricted Access or Sealed Documents event category in CM/ECF, and attach the response or reply to the motion to seal. The docket text is public, but the document will remain sealed until the court rules on the merits of the motion to seal. A Notice of Electronic Filing will be generated to all ECF-registered case participants, but the sealed document cannot be viewed electronically by anyone with a PACER subscription.

12.6.3 *Ex Parte* Sealed Motion or Motion to Seal *In Camera*

If a party wishes to file an *ex parte* sealed motion in a criminal case or submit documents for *in camera* review in a civil or criminal case, then the filing user should select an *Ex Parte* Sealed Motion or a Motion to Seal *In Camera* under the Restricted Access or Sealed events category in CM/ECF. The motion and any attachments will be sealed and remain *ex parte* until the court rules on the merits of the motion. A Notice of Electronic Filing will NOT be generated to any case participants, and there will be no public docket entry for this type of filing unless the court would direct otherwise. When required by law, the court will provide public notice of the sealing request.

12.6.4 Service of Sealed Documents

In addition to the paper copy requirement for the presiding judicial officer outlined in Section 12.3 of these Procedures, filing users are reminded that they must serve sealed documents in the traditional manner on counsel if required by rule. CM/ECF will not electronically serve sealed material.



12.6.5 Proposed Order to Seal

Any motion to seal must also include language requesting that the corresponding order be sealed. In addition, the Proposed Order submitted with said motion to seal shall indicate the parties upon whom the order is to be served.

12.6.6 Motion to Seal Granted

Upon entry of an order that grants a motion to file documents under seal, the Clerk's Office will, unless directed otherwise, file, under seal, the proposed documents accompanying the motion as of the date the order was entered. If proposed documents did not accompany the motion, the Clerk's Office will contact the presiding judge or the filing party for the subject documents.

12.6.7 Motion to Seal Denied

Motions to seal and any accompanying proposed documents for sealing are considered lodged with the court pending a ruling on the sealing request. Upon entry of an order denying a motion to seal, the Clerk's Office will, if so directed, file the proposed documents accompanying the motion as of the date the order was entered; otherwise, the motion and accompanying proposed documents will remain lodged with the court and unavailable for public viewing.

13. Discovery

In accordance with the Local Rules, parties shall not file discovery with the court. Parties will serve discovery on the respective parties, and file with the court **only** the Certificate of Service. However, discovery materials to be used in support of any motion shall be filed electronically with the court as an attachment to the motion pursuant to L. R. Civ. P. 26.3(a). The Certificate of Service docket event is located in CM/ECF under the category **Other Filings > Other Documents > Certificate of Service**.



14. Documents and Other Filings

14.1 Consents to Proceed Before a United States Magistrate Judge

Consents to Proceed before a United States Magistrate Judge should be e-mailed to wvsd_consents@wvsd.uscourts.gov, except for Consents in Social Security cases. See Section 5.2 of these Procedures for Consents in Social Security Cases.

14.2 Large Documents

14.2.1 Size

Because large documents may not upload properly to CM/ECF or download within a reasonable amount of time for users with a 56K modem, documents over ten megabytes will be rejected by CM/ECF. Therefore, the size limit of each PDF document filed in ECF is ten megabytes.¹

14.2.2 Large Documents to be Broken into Separate Parts

Filing users must submit PDF files that are larger than ten megabytes by separating the large document into smaller sections, each section being no larger than ten megabytes, by use of ECF's attachment feature. When a document exceeds ten megabytes, the main document shall consist of the first ten megabytes of the document, with the remainder of the document being filed as attachments thereto and described on the attachment screen; e.g., "Continuation of Main Document, pages 51-100," "Continuation of Main Document, pages 101-150," and so on, with each attachment not to exceed ten megabytes. The filing user must label each part clearly when attaching in ECF.

14.3 Color Documents

For a scanned document to be filed electronically, the scanner must be configured at 300 ppi or higher. Documents appearing in color in their original form, such as color photographs, may be scanned in color and then uploaded to the system.

¹ To check the size of a document, hold the mouse pointer over the document's title in the Adobe file folder. A small menu box will appear containing the type and size of the document. Alternatively, you may open the document and go to **File > Document Properties > Description**. The size is noted under PDF Information.



14.4 Papers Containing Advertisements

Papers containing advertisements, which may be generated as a result of the use of free or trial-run PDF conversion software, will be stricken.

14.5 Legibility

The filing party is responsible for the legibility of the scanned document.

14.6 Document Retention

Except for criminal case documents mentioned in Section 1.5.3 of these Procedures, the filing user shall retain all documents containing original signatures of anyone other than the filing user for a period of not less than two (2) years after all dates for appellate review have expired.

14.7 Copies for Judge's Chambers

When electronically filing documents, a paper courtesy copy to the presiding judge is not required except where any motion, memorandum, response or reply, together with documents in support thereof, is 50 pages or more in length or where any administrative record is 75 or more pages in length, or for sealed documents as set forth in Section 12.3 of these Procedures.

14.8 Petitions for Writs of *Habeas Corpus ad Prosequendum* or *ad Testificandum*

Upon the filing of a petition for a writ of *habeas corpus ad prosequendum* or *ad testificandum* with an accompanying order and writ filed as two separate attachments to the petition, the filing user is required to immediately notify the judicial officer who will be signing the proposed order directing the Clerk to issue the writ.

14.9 Materials that Cannot be Converted to PDF Within ECF

A filing user may submit exhibits or materials that cannot be converted to PDF electronic form (e.g., videotape or audiotape) directly to the Clerk's Office. Such materials shall be submitted with a paper cover page containing the case caption, a description of the materials, and a designation of the pleading or motion to which the materials relate (e.g., "Videotape Deposition of John Doe, Exhibit 7 to Plaintiff's Motion for Summary Judgment"). The PDF version of the cover page shall be an ECF attachment to the electronically filed pleading, motion or paper to



which the materials relate. A paper copy of the Notice of Electronic Filing of the ECF attachment shall also be submitted to the Clerk's Office with the materials.

The Clerk's Office will note in ECF its receipt of the material that cannot be converted to a PDF within ECF with a text-only entry.

The Notices of Electronic Filing generated by the electronic filing of the cover page and by the court's text-only entry noting receipt of materials shall not constitute service. **The filing user must serve this type of material on all other parties.**

Any discovery submitted to the Clerk's Office under this section must also adhere to the Local Rules of Civil Procedure regarding the non-filing of discovery materials. See also Section 13 of these Procedures and L. R. Civ. P. 26.3.

This section is not intended to apply to oversized photographs or large paper documents that can be reduced in size and then scanned into PDF and uploaded in ECF.

14.10 Court Reporters' Transcripts

(a) Filing.

- (1) *Reporters employed by the judiciary.* Unless the court orders otherwise, when an official court reporter employed by the judiciary completes a transcript of a court proceeding, the reporter must promptly file a certified copy on the court's ECF system.
- (2) *Other reporters.* Unless the court orders otherwise, when a court reporter not employed by the judiciary completes a transcript of a court proceeding, the reporter must promptly file a certified copy with the clerk, and the clerk must then file the copy on the court's ECF system.

(b) Redaction Deadlines

From the date the Court Reporter or the clerk files the transcript electronically through the court's ECF system, the following deadlines apply:

- (1) 7-day deadline for the parties to file a Notice of Intent to Redact from the filing date of the transcript;



The Notice of Intent to Redact should only state the party's intent and not include any actual personal identifiers. If no such notice is filed within the allotted time, the court will assume redaction of personal data identifiers from the transcript is not required.

- (2) 21-day deadline for the parties to file a Redaction Request of personal identifiers or Motion to Redact information other than the personal identifiers;

The Redaction Request will be filed in ECF as a restricted entry available only to court users, case participants and persons using public terminals in the clerk's office.

- (3) 31-day deadline for the court reporter to file a redacted transcript;
- (4) 90-day deadline for public release of the transcript.

If a party fails to request redaction within the time frames, the transcript will be made available, without redaction, at the end of the 90-day period to any registered PACER user.

(c) Redaction Without Permission from the Court

Only the following personal identifiers may be redacted without permission from the presiding judge by Court Order:

- (1) Social Security Numbers and Taxpayer-Identification Numbers;
- (2) Financial Account Numbers;
- (3) Names of Minor Children;
- (4) Dates of Birth; and
- (5) Homes Addresses of Individuals Not a Party to the Action.

(d) Post-Filing Restriction.

Unless the court orders otherwise, access to a transcript prepared by an official court reporter and filed under L R 80.1(a) is restricted as follows:



- (1) A transcript of a sealed proceeding or filed in a sealed case must not be made available to the public in any format unless directed by a judge of this court.
- (2) Remote electronic access to any other transcript is restricted to the users identified in L. R. Civ. P. 80.1(d)(3) for 90 days after the transcript is filed.
- (3) Unless the court orders otherwise, during the 90 days after a transcript is filed, only the following users may access the transcript through the court's ECF system:
 - (A) Court staff;
 - (B) Persons using public terminals in the clerk's office for inspection only, not for copying;
 - (C) Parties that have purchased the transcript; and
 - (D) Other persons — such as, for example, appellate attorneys — as ordered by the court.

(e) Availability After 90-Day Restriction Period.

After the 90-day post-filing restriction period and after the court resolves all pending motions related to the transcript's availability or contents, a transcript not subject to special restrictions under L. R. Civ. P. 80.1(d) is available as follows unless the court orders otherwise:

- (1) *Unredacted transcripts.* If an original transcript was not redacted, the clerk must permit remote electronic access to the transcript through the court's ECF system and must permit inspection and copying of the transcript at the clerk's office.
- (2) *Redacted transcripts.* If an original transcript was redacted, the clerk must permit remote electronic access to the **redacted** transcript through the court's ECF system. Remote electronic access to the **unredacted** transcript is restricted to the users identified in L. R. 80.1(d)(3). The clerk must permit inspection and copying of the unredacted transcript at the clerk's office.



(3) *Voir dire transcripts.* In order to avoid the need for constant redaction of personal identifiers for jurors, court reporters will file the transcript for the voir dire of jurors as a separate volume. The voir dire transcripts will have restricted access so that it is available only to court users, case participants, the public terminals in the Clerk's Office, or other persons, for example, appellate attorneys, as ordered by the Court.

(f) Transcript Fees.

(1) *Payment required.* Ordinarily, until a party makes the required payment, a court reporter may decline to begin preparing a transcript or to furnish a completed transcript. But the court may excuse a party who has been permitted to proceed in forma pauperis from paying for a transcript and may require the court reporter to begin preparing a transcript or to furnish a completed transcript without payment from the party.

(2) *Fees for electronic access.* A person other than a court employee who remotely accesses a transcript through the court's ECF system must pay the applicable fees. A person may electronically access a transcript at the public terminals in the clerk's office for free.

(3) *Fees for purchasing transcript from court reporter.* A person may buy a copy of a publicly available transcript from a court reporter by paying the applicable fee.

(4) *Fee schedule.* The fees for transcript preparation and for transcripts purchased from court reporters are established by the Judicial Conference of the United States. The current fee schedule is available from the clerk and from the official court reporters.

15. Signatures

15.1 Attorney Signatures

The attorney's login and password shall constitute that attorney's signature on all electronically filed documents for purposes of the Local and Federal Rules of Civil and Criminal Procedure, including but not limited to Rule 11 of the Federal Rules of Civil Procedure. A pleading or other document requiring an attorney's signature may be scanned, or may be electronically signed in the following manner:



“s/(attorney name).” An attorney’s signature name should correspond to the name in which an attorney is admitted to a state bar. Example: If the State Bar admitted name is “Judith Attorney,” the signature name should not be “Judy Attorney.” The correct format for an attorney signature is as follows:

s/ Judith Attorney

[State] Bar Number: 12345
Attorney for (Party Names(s))
ABC Law Firm
123 South Street
Charleston, WV 25301
Telephone: (304) 123-4567
Fax: (304) 123-6789
E-mail: judith_attorney@law.com

15.2 Visiting Attorney/Local Attorney Signatures

Visiting attorneys and their local counsel, as defined in the Local Rules for the Southern District of West Virginia, shall fully comply with these Administrative Procedures. Local counsel shall sign all documents, including the documents prepared by visiting attorneys regardless of whether the visiting attorney is a filing user with a court-issued login and password.

15.3 Non-Attorney Signatures

If the original document requires the signature of a non-attorney other than a *pro se* filer, the filing party or the Clerk’s Office shall scan the original document, then electronically file it in CM/ECF. Alternatively, the filing user may convert the document into a PDF text document and submit the document using “s/” for the signature(s) of the non-attorney(s). The filing user shall retain all documents containing original signatures of anyone other than the filing user for a period of not less than two (2) years after all dates for appellate review have expired.

15.4 Multiple Signatures

The following procedure applies when a stipulation or other document (e.g., joint motion, joint exhibit list or proposed order) requires two or more signatures:

15.4.1 The filing party or attorney shall initially confirm that the content of the document is acceptable to all persons required to sign the document and



shall obtain the signatures of all parties on the document. For purposes of this rule, physical, facsimile, or electronic signatures are permitted.

- 15.4.2** The filing party or attorney then may file the scanned document, or shall file the document electronically, indicating the signatories, e.g., “s/Judith Attorney,” “s/John Smith,” etc., in the format as follows:

s/ Judith Attorney

[State] Bar Number: 12345
Attorney for (Party Names(s))
ABC Law Firm
123 South Street
Charleston, WV 25301
Telephone: (304) 123-4567
Fax: (304) 123-6789
E-mail: judith_attorney@law.com

s/ John Smith

[State] Bar Number: 12345
Attorney for (Party Names(s))
123 Law Firm
ABC Main Street
Charleston, WV 25301
Telephone: (304) 111-2222
Fax: (304) 222-3333
E-mail: john_smith@mylawoffice.com

- 15.4.3** Documents that are electronically filed and require original signatures other than that of the filing party must be maintained in paper form by the filing party for a period of not less than two (2) years after all dates for appellate review have expired.

15.5 Authenticity Disputes

A non-filing signatory or party who disputes the authenticity of an electronically filed document with a non-attorney signature or the authenticity of the signature on that document must file an objection within 10 days of receiving the Notice of Electronic Filing, or, if a non-filing user, within 10 days of receiving the document. Should the authenticity of the document be questioned, the presiding judge may require the filing user to produce the original document



16. Fees Payable to the Clerk

Any fee required for filing a pleading or other document in this court that is not paid electronically via Pay.gov is payable to the Clerk of the Court by check, money order, cash, or debit/credit card. The Clerk's Office will document the receipt of fees on the docket with an appropriate entry. The court will not maintain electronic billing or debit accounts for lawyers or law firms.

17. Orders

17.1 Entry of Orders – General

The assigned judge or the Clerk's Office shall electronically file all signed orders. Upon filing, CM/ECF will send a "Notice of Electronic Filing" to all filing users in that case. The Clerk's Office will send a paper copy of the order to all parties not filing electronically. Any order signed electronically has the same force and effect as if the judge had affixed the judge's signature to a paper copy of the order, and the order had been entered on the docket conventionally.

17.2 Proposed Orders

17.2.1 A proposed order shall be submitted electronically to ECF as an attachment to the motion requesting the relief to be ordered.

17.2.2 If the proposed order does not require the filing of a motion (e.g., proposed pretrial order or a proposed order for compromise, settlement and dismissal), it shall be submitted electronically as a separate ECF filing.

17.2.3 In preparing the proposed order to be attached to the motion, the filing party will use the word PROPOSED in the description field of the ECF attachment screen, but shall not use the word PROPOSED in the title of the order itself. Likewise, the word PROPOSED shall not be used in proposed orders that are submitted as separate ECF filings. The docket text will reflect that the order is PROPOSED, but the actual document will not.

17.2.4 Upon request, the presiding judge may require the filing user to submit proposed orders in standard word processing software via e-mail directly to chambers so that any necessary changes to the proposed order can be made.



18. Correcting Docket Entries

- 18.1 Once a document is submitted and becomes part of the case docket and electronic case file, corrections to the docket are made only by the Clerk's Office. CM/ECF will not permit the filing party to make changes to the document filed in error or the associated docket entry once the transaction has been accepted.
- 18.2 The party electronically filing a document shall be responsible for selecting the correct docket entry title for the document by using one of the docket event categories prescribed by the court. Electronic filing errors in a case may include the selection of the wrong docket entry title from the docket event categories, associating the wrong PDF file with a docket entry, or entering the wrong case number and not discovering the error before the transaction is completed. **IF THIS OCCURS, CONTACT THE CLERK'S OFFICE IMMEDIATELY. DO NOT ATTEMPT TO REFILE THE DOCUMENT.**
- 18.3 As soon as possible after an error is discovered, the filing party should contact the Clerk's Office with the case number and document number for which the correction is being requested. The Clerk's Office will determine what corrective action will be taken in each instance. If the document needs to be refiled, the filing party will be so advised by the Clerk's Office.
- 18.4 Docket text made electronically by a filing user and entered on the docket will not be deleted. The Clerk's Office may edit or modify an entry, or delete and/or reattach correct images.
- 18.5 If the Clerk's Office is not able to make a corrective docket entry, when appropriate, it may be necessary for a filing user to submit a motion requesting that a document be stricken in the case in which an incorrect filing is made.
- 18.6 If the text of a docket entry and the electronic copy of an order are inconsistent, the electronic copy of the order serves as the official Court record.

19. Technical Failures

19.1 Technical Failure of the CM/ECF System

- 19.1.1 The Clerk's Office shall deem the Southern District of West Virginia's CM/ECF site to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 10:00 a.m. that day. Known



system outages will be posted on the web site, if possible. In such instances where filing is a matter of urgency or is necessary to meet a deadline, the filing user may submit the document to the court in the traditional manner.

19.1.2 A filing user whose filing is made untimely as the result of a technical failure of the court's CM/ECF site may seek appropriate relief from the court. However, filing users are cautioned that, in some circumstances, the court lacks the authority to grant an extension of time to file (e.g., Rule 6(b) of the Federal Rules of Civil Procedure).

19.2 Technical Failures of the Filing User's System

19.2.1 Problems with the filing user's system, such as phone line problems, utility failures, problems with the filing user's Internet Service Provider (ISP), or hardware or software problems, will not constitute a technical failure under these procedures nor excuse an untimely filing. A filing user who cannot file a document electronically because of a problem with the filing user's system must first contact the Clerk's Office for permission to file the document traditionally or by another alternative means.

19.2.2 If the filer is unable to file electronically because of technical failures, the filer must serve the opposing parties in the traditional manner.

20. Public Access and Privacy Concerns

20.1 Privacy Protection for Filings Made With the Court

Unless the court orders otherwise, an electronic or paper filing with the court that contains an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, or a financial-account number, a party or nonparty making the filing may include only:

- (a) **Social Security Numbers.** If an individual's Social Security number must be included in a document, only the last four digits of that number should be used.
- (b) **Dates of Birth.** If an individual's date of birth must be included in a document, only the year should be used.
- (c) **Names of Minor Children.** If the involvement of a minor child must be mentioned, only the initials of that child should be used.



- (d) **Financial Account Numbers.** If financial account numbers are relevant, only the last four digits of these numbers should be used.

20.2 Exemptions from the Redaction Requirement.

The redaction requirement does not apply to the following:

- (a) a financial-account number or real property address that identifies the property allegedly subject to forfeiture in a forfeiture proceeding;
- (b) the record of an administrative or agency proceeding;
- (c) the official record of a state-court proceeding;
- (d) the record of a court or tribunal, if that record was not subject to the redaction requirement when originally filed;
- (e) a filing covered by Federal Rules of Civil Procedure 5.2(c) or (d); and
- (f) a pro se filing in an action brought under 28 U.S.C. §§ 2241, 2254, or 2255.

20.3 Privacy Recommendations.

You are advised to exercise caution when filing documents that contain the following:

- (a) Personal identification numbers, such as driver's license numbers;
- (b) Medical records, treatment and diagnosis;
- (c) Employment history;
- (d) Individual financial information;
- (e) Proprietary or trade secret information;
- (f) Information regarding an individual's cooperation with the government;
- (g) Information regarding the victim of any criminal activity;



- (h) National security information;
- (i) Sensitive security information as described in 49 U.S.C. §114(s); and
- (j) Home addresses identifying location beyond the city and state.

20.4 Limitations on Remote Access to Electronic Files; Social Security Appeals and Immigration Cases.

Unless the court orders otherwise, in an action for benefits under the Social Security Act, and in an action or proceeding relating to an order of removal, to relief from removal, or to immigration benefits or detention, access to an electronic file is authorized as follows:

- (a) counsel of record may have remote electronic access to any part of the case file, including the administrative record;
- (b) any other person may have electronic access to the full record at the courthouse, but may have remote electronic access only to:
 - (1) the docket maintained by the court; and
 - (2) an opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record. See Section 5 of these Procedures.

20.5 Filings Made Under Seal.

The court may order that a filing be made under seal without redaction. The court may later unseal the filing or order the person who made the filing to file a redacted version for the public record.

20.6 Protective Orders.

For good cause, the court may by order in a case:

- (a) require redaction of additional information; and
- (b) limit or prohibit a nonparty's remote electronic access to a document filed with the court.



20.7 Option for Additional Unredacted Filing Under Seal.

A person making a redacted filing may also file an unredacted copy under seal. The court must retain the unredacted copy as part of the record.

20.8 Option for Filing a Reference List.

A filing that contains redacted information may be filed together with a reference list that identifies each item of identifier that uniquely corresponds to each item listed. The list must be filed under seal and may be amended as of right. Any reference in the case to a listed identifier will be construed to refer to the corresponding item of information.

20.9 Waiver of Protection of Identifiers.

A person waives the protection of Federal Rule of Civil Procedure 5.2(a) as to the person's own information by filing it without redaction and not under seal. 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 the redaction of personal identifiers is done. The clerk will not review each document for redaction.

20.10 Privacy - Judicial Conference Policy

In addition to the privacy items listed in Section 20.1 above, the Judicial Conference policy requires that the court not provide public access to the following documents: unexecuted summonses or warrants of any kind (e.g., search warrants, arrest warrants); pretrial bail or presentence investigation reports; statements of reasons in the judgment of conviction; juvenile records; documents containing identifying information about jurors or potential jurors; financial affidavits filed in seeking representation pursuant to the Criminal Justice Act (CJA) and other CJA-related forms; *ex parte* requests for expert or investigative services at court expense; and sealed documents.

21. Public Access to the CM/ECF Docket

21.1 Public Access at the Court

Electronic access to the electronic docket and documents, except certain filings (restricted access or sealed access documents), filed in CM/ECF is available for



viewing at no charge at the public terminal in the Clerk's Office during regular business hours. A copy fee for an electronic reproduction is required in accordance with 28 U.S.C. § 1920.

21.2 Internet Access

Remote electronic access to CM/ECF for viewing purposes is limited to subscribers to Public Access to Court Electronic Records (PACER). The Judicial Conference of the United States has ruled that a user fee will be charged for remotely accessing certain detailed case information. Application forms and information on PACER can be found on the court's web site at www.wvsd.uscourts.gov.

21.3 Conventional and Certified Copies

Conventional copies and certified copies of electronically filed documents may be purchased at the Clerk's Office. The fee for copying and certifying will be in accordance with 28 U.S.C. § 1914.

22. Hyperlinks

Electronically filed documents may contain the following types of hyperlinks:

- (a) Hyperlinks to other portions within the body of the same document; and
- (b) Hyperlinks to an Internet site that contains a source document for a citation.

Hyperlinks to cite authority may not replace standard citation format. Complete citations must be included in the text of the filed document. Neither a hyperlink, nor any site to which it refers, shall be considered part of the record. Hyperlinks are simply convenient mechanisms for accessing material cited in a filed document. The court accepts no responsibility for the availability or functionality of any hyperlink.

23. Document History

Effective May 2005
Revised February 2010
Revised November 2012
Revised December 1, 2016