

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN AND WESTERN DISTRICTS OF KENTUCKY**

**IN RE: ELECTRONIC CASE FILING
 ADMINISTRATIVE POLICIES AND PROCEDURES
 as Amended February, 2006**

JOINT GENERAL ORDER NUMBER: 06- 01

**ENTERED
FEBRUARY 8, 2006**

ORDER

Effective September 1, 2006 all pleadings or documents filed with the Court¹ must be filed using the Electronic Case Filing System (ECF System), unless otherwise specified herein.

The Court being satisfied that the attached Amended Electronic Case Filing Administrative Policies and Procedures, read in conjunction with the ECF User Manual, are consistent with the policies of the Judicial Conference of the United States, as amended, the E-Government Act of 2002, as amended, the Joint Local Rules for the Eastern and Western Districts of Kentucky, and all applicable Federal Rules of Civil and Criminal Procedures,

IT IS HEREBY ORDERED:

1. The court adopts and incorporates the attached Amended Electronic Case Filing Administrative Policies and Procedures into this Order by reference and directs that they be applied and interpreted in connection with the ECF User Manual.
2. The clerk of court will amend the ECF User Manual as appropriate.
3. The clerk of court will make this Order, the Amended Administrative Policies and Procedures and the ECF User Manual available to the bar and public at all divisions of the court and on the courts' public web sites.

Dated this 8th day of February, 2006.

s/ Joseph M. Hood

JOSEPH M. HOOD, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

s/ John G. Heyburn, II

JOHN G. HEYBURN II, CHIEF JUDGE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

¹Cases filed prior to March 17, 2003 in the Eastern District of Kentucky shall remain paper cases.

ENTERED

JUL 12 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN AND WESTERN DISTRICTS OF KENTUCKY

WENDY L. ARMSTRONG
BY *[Signature]*
DEPUTY CLERK

IN RE: **ELECTRONIC CASE FILING
ADMINISTRATIVE POLICIES AND PROCEDURES
as Amended July, 2011**

JOINT GENERAL ORDER NUMBER: 11- 02

ORDER

The Court being satisfied that the attached Amended Electronic Case Filing Administrative Policies and Procedures, read in conjunction with the ECF User Manual, are consistent with the policies of the Judicial Conference of the United States, as amended, the E-Government Act of 2002, as amended, the Joint Local Rules for the Eastern and Western Districts of Kentucky, and all applicable Federal Rules of Civil and Criminal Procedures,

IT IS HEREBY ORDERED:

1. The court adopts and incorporates the attached Amended Electronic Case Filing Administrative Policies and Procedures into this Order by reference and directs that they be applied and interpreted in connection with the ECF User Manual.
2. The clerk of court will amend the ECF User Manual as appropriate.
3. The clerk of court will make this Order, the Amended Administrative Policies and Procedures and the ECF User Manual available to the bar and public at all divisions of the court and on the court's public web sites.
4. Federal Rule of Civil Procedure 5.1 and Federal Rule of Criminal Procedure 49.1 implement the requirements of the E-Government Act of 2002 and codify, to a large extent, the 2001 Judicial Conference Privacy Policy, as revised, requiring redaction of personal identifier information. Therefore, Joint General Order 04-01 is **WITHDRAWN**.
5. This Joint General Order supersedes Joint General Order 06-01.

Dated this ^{12th} day of July, 2011.

Jennifer B. Coffman
JENNIFER B. COFFMAN, CHIEF JUDGE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY

Thomas B. Russell
THOMAS B. RUSSELL, CHIEF JUDGE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN AND WESTERN DISTRICTS OF KENTUCKY**

**AMENDED ELECTRONIC CASE FILING
ADMINISTRATIVE POLICIES AND PROCEDURES**

1. DEFINITIONS.

- 1.1** “**ELECTRONIC FILING SYSTEM**” (ECF) 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**” (NEF) 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 date the document is entered on the docket, 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. The electronic link (hyperlink) will not allow access to a sealed document or *ex parte* motion.. A document shall not be considered filed for the purposes of Federal Rules of Civil and Criminal Procedures until the filing party receives a system generated Notice of Electronic Filing with a hyperlink to the electronically filed document.
- 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**” (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 failure 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.

1.8 **“SEALED DOCUMENT”** is defined as a document or motion filed pursuant to (1) a protective order, (2) an order granting leave to file the sealed document or motion, in conjunction with a motion for leave to seal or a previously filed redacted document, or (3) included within a category of documents considered sealed under a federal statute or federal rule of procedure, local rule, or standing order of this court. **The sealed document or motion is not available electronically or by any other means to the parties, attorneys or the public.**

2. SCOPE OF ELECTRONIC FILING.

- (a) All civil, criminal and miscellaneous cases shall be assigned to the Electronic Filing System. Effective September 1, 2006, all cases, proceedings, motions, memoranda of law and other pleadings or documents filed with the court must be filed using ECF unless otherwise specified herein.
- (b) The filing of all civil and miscellaneous initial papers shall be accomplished electronically under procedures outlined in the ECF User Manual. In a case removed to the federal court, copies of all documents previously filed in the state court shall be filed as attachments to the Notice of Removal, subject to requirements and limitations set forth in the ECF User Manual, or as otherwise ordered by the Court. Service of the summons and complaint must be made under Federal Rules of Civil Procedure 4.
- (c) A party proceeding *pro se* shall not file electronically, unless otherwise permitted by the court. *Pro se* filers shall file paper originals of all documents. The clerk’s office will scan these original documents into the court’s electronic System.
- (d) Due to the nature of their content, social security appeals and immigration cases shall have restricted status, meaning that remote public access to documents in these cases will be limited to Filing Users who are counsel of record. All documents filed in these cases will, however, be available for viewing by the public at the clerk’s office, unless otherwise sealed.

3. ELIGIBILITY, REGISTRATION, PASSWORDS.

- (a) Unless otherwise exempt as set forth herein, an attorney admitted to the Bar of this court, including an attorney admitted *pro hac vice*¹, shall register as a Filing

¹A separate motion shall be filed for each attorney seeking *pro hac vice* admission to the Court. Attorneys admitted *pro hac vice* will be given 30 days to register as an ECF Filing User. Also, see LR 83.2(a) to obtain information regarding permission to practice in a particular case.

User by completing the prescribed registration form and submitting it to the clerk for the District in which the attorney intends to become a Filing User. If the Filing User intends to electronically file documents in both Districts, a separate registration form must be completed for both the Eastern and Western Districts.

- (b) 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.
- (c) By signing the registration form, the Filing Users certify that they have read and are familiar with the rules of practice of the court and the administrative policies and procedures governing electronic filing²; the method of training in the System used prior to becoming a Filing User; and that they have a PACER account³. An individual may register more than one Internet email address. All signed original Attorney Registration Forms shall be mailed or delivered by hand to the clerk's office. The clerk's office will either mail or email the login and password to the attorney or the attorney may arrange to pick up his/her login and password at the clerk's office.
- (d) Once the registration is processed by the clerk, the Filing User shall protect the security of the User password and immediately notify the clerk if the Filing User learns that the password has been compromised. Filing Users may be subject to sanctions for failure to comply with this provision. After registering, attorneys may change their passwords. If an attorney comes to believe that the security of an existing password has been compromised and that a threat to the System exists, the attorney must change his or her password immediately.
- (e) Exemptions from mandatory electronic filing may be granted upon submission of a written request to the clerk. The written request shall include a supporting affidavit showing a substantial undue hardship. Final authority to grant such request is vested in the Chief Judge or a designee of the Chief Judge.
- (f) If an attorney is leaving a law firm and is the attorney of record on an existing case and representation in the case will remain with the law firm, withdrawal and substitution of counsel must be made prior to the attorney's termination in the law firm, for the following reason:
 - (1) The attorney leaving the firm has an email address with the law firm he or she is leaving on record with the court. This email address may be

²Rules of practice and amended administrative policies and procedures along with tutorials and other information may be found at www.kywd.uscourts.gov and at www.kyed.uscourts.gov.

³Visit the PACER web site at <http://pacer.psc.uscourts.gov> to establish a PACER account.

disabled by the law firm as soon as the attorney terminates his/her employment. The electronic notices in ECF will continue to go to the terminated attorney's email address at the former firm. If the email address is disabled at the law firm, the attorney will not receive the electronic notice. If a withdrawal/substitution of counsel has not been filed prior to the attorney leaving the firm, the law firm should not disable the email account of the attorney leaving the firm until another attorney in the firm enters his/her appearance. The law firm should designate someone in the firm to check this email account for ECF notices until substitution of counsel has been filed with the court.

- (2) If the attorney leaving the firm is taking active cases from the firm, the attorney needs to change his/her email address as soon as possible, otherwise the attorney will not receive electronic notices from ECF. The email will continue to be sent to the former law firm's email address still on record. It is the responsibility of the Filing User to maintain a current and correct email address in their CM/ECF account. Procedures for changing an email address may be found in the ECF User Manual.

4. ELECTRONIC FILING AND SERVICE OF DOCUMENTS.

- (a) Electronic transmission of a document to the Electronic Filing System in accordance with these procedures, together with the transmission of a Notice of Electronic Filing from the court with a hyperlink to the electronically filed document, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Joint Local Rules of this court.
- (b) Emailing a document to the clerk's office or to the assigned judge does not constitute filing the document. A document shall not be considered filed until the System generates a Notice of Electronic Filing with a hyperlink to the electronically filed document.
- (c) Before filing a scanned document with the court, a Filing User must verify its legibility.
- (d) 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.
- (e) Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight, **EASTERN TIME**, in order to be considered timely filed that day. However, if time of day is of the essence, the assigned judge may order a document filed by a certain time.

- (f) In accordance with Rule 6(e) of the Federal Rules of Civil Procedure and Rule 45(c) of the Federal Rules of Criminal Procedure, service by electronic means is treated the same as service by mail for the purposes of adding three (3) days to the prescribed period to respond.
- (g) Upon the filing of a document, a docket entry will be created using the information provided by the Filing User. The clerk will, where necessary and appropriate, modify the docket entry description to comply with quality control standards. In the event a Filing User electronically files a document in the wrong case, the incorrect PDF document is attached, or a sealed document is filed in error, the Clerk of Court, or his designee, shall be authorized to strike the document from the record. A notice of the action striking a document from the record shall be served on all parties in the case.
- (h) By participating in the electronic filing process, the parties consent to the electronic service of all documents, and shall make available current and correct electronic mail addresses for service. Upon the filing of a document by a Filing User, a Notice of Electronic Filing (NEF), with a hyperlink to the electronic document and an email message will be automatically generated by the electronic filing system, and sent via electronic mail to the email addresses of all parties who have registered in the case.

When a sealed document is filed, ECF provides notice of electronic filing to all parties in the case. A sealed document will not be available electronically to parties, attorneys or the public. The filing party **must use** alternate forms of service to provide any parties entitled to notice with copies of the sealed document.

In addition to receiving email notifications of filing activity, the Filing User is strongly encouraged to sign on to the electronic filing system at regular intervals to check the docket in his/her case.

- (i) If the filing of an electronically submitted document requires leave of court, such as an amended complaint, the attorney shall attach the proposed document as an attachment to the motion requesting leave to file. If the court grants the motion, the clerk will electronically file the document without further action by the Filing User.

A sealed document must not be attached to the motion, but rather must be electronically filed separately as a provisionally sealed document. The document stays provisionally sealed until the court rules on the motion to seal.

- (j) A certificate of service must be included with all documents filed electronically, excluding an *ex parte* motion. Such certificate shall indicate that service was

accomplished pursuant to the court's electronic filing procedures. Service by electronic mail shall constitute service pursuant to Federal Rules of Civil Procedure 5(b)(2)(D) and shall entitle the party being served to the additional three (3) days provided by Federal Rules of Civil Procedure 6(e).

A party who is not a registered participant of the System is entitled to a paper copy of any electronically filed pleading, document, or order. The filing party must therefore provide the non-registered attorney or party, including a terminated party or attorney, if appropriate, with the pleading, document, or order pursuant to Federal Rules of Civil Procedure (Fed.R.Civ.P.5(b)). Under the rules, they can be served with a paper copy of the electronically filed document, or they can consent in writing to service by any other method, including other forms of electronic service such as fax or direct email.

The following is a suggested certificate of service for electronic filing:

CERTIFICATE OF SERVICE

On [Date], I electronically filed this document through the ECF system, which will send a notice of electronic filing to: [Attorney Name].

and I [mailed] [hand delivered] [faxed] this document and the notice of electronic filing to: [Attorney/Party Name], [Address].

s/ [typed name of attorney]
Attorney's name
Attorney for:
Law Firm Name (if applicable)
Address
Phone Number
Fax Number
Attorney's Email address

5. ENTRY OF COURT DOCUMENTS.

- (a) A document entered or issued by the court will be filed in accordance with these procedures 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.
- (b) All signed orders will be electronically filed or entered. An order containing the electronic 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.

- (c) Orders may also be issued as “text-only” entries on the docket, without an attached document. Such orders are official and binding.
- (d) The court may sign, seal and issue a summons electronically, although a summons may not be served electronically.
- (e) All proposed orders submitted electronically must be in PDF format and must be:
 - (1) submitted as an attachment to a motion or stipulation and identified as “proposed”; or
 - (2) contained within the body of a stipulation or agreed order. If the Judge approves the proposed order, it will be refiled electronically under a separate document number.

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 (NEF), with a hyperlink to the electronic document. Electronic transmission of the NEF, along with a hyperlink to the electronic document, constitutes the notice required by Federal Rules of Civil Procedure 77(d) and Federal Rules of Criminal Procedure 49(c). The clerk must give notice in paper form to a *pro se* party or an attorney who is not a Filing User to the extent notice is required. The clerk shall serve a sealed order or judgment, in paper form, to any party entitled to notice.

When the Notice of Electronic Filing transmitted to a party contains a complete court order and states there is no document attached, notice of entry of the order shall be deemed served on the date and time stated on the Notice of Electronic Filing that is transmitted to the party served.

7. ATTACHMENTS AND EXHIBITS.

Documents referenced as exhibits or attachments shall be filed in accordance with these administrative policies and procedures and 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, unless the attachment relates to a sealed document. Filing Users who file excerpts of documents as exhibits or attachments under these procedures 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. The court may require parties to file additional excerpts or the complete document.

8. SEALED AND EX PARTE DOCUMENTS.

8.1 SEALED DOCUMENTS

(a) Procedure.

- (1) **Civil Motion for Leave to Seal.** A party seeking to file a sealed document shall electronically file a motion for leave to seal. The motion must state why sealing is required and whether redaction could eliminate or reduce the need for sealing. A motion for leave to seal is not required if the document is (1) already subject to a protective order or (2) included within a category of documents considered sealed under a federal statute or federal rule of procedure, local rule, or standing order of this court. The motion for leave to seal and any attachments to the motion to seal will be available electronically to the public.
- (2) **Criminal Motion for Leave to Seal.** A party seeking to file a sealed document shall electronically file a motion for leave to seal. The motion must state why sealing is required and whether redaction could eliminate or reduce the need for complete sealing. A motion for leave to seal is not required if the document is (1) already subject to a protective order or (2) included within a category of documents considered sealed under a federal statute or federal rule of procedure, local rule, or standing order of this court. The motion for leave to seal, any attachments to the motion for leave to seal, the document(s) subject to the motion, and any response or reply thereto, will not be available electronically or by any other means. The filing party must use alternate forms of service to provide any parties entitled to notice with a copy of the document.
- (3) **Sealed Document.** The document to be sealed must not be attached to the motion, but rather must be electronically filed separately as a provisionally sealed document. This document stays provisionally sealed until the court rules on the motion to seal.
- (4) **Delegation to Strike.** The Clerk of Court, or designee, is authorized to strike from the record a sealed document electronically filed in error. A notice of the action striking a document from the record shall be served on all parties in the case.
- (5) **Order.** When documents are ordered to be placed under seal, the Clerk will officially file the documents.

- (6) **Access to Sealed Documents.** Sealed documents will be electronically accessible only to the Court. Upon the filing of a notice of appeal to the Sixth Circuit Court of Appeals, electronic access to sealed documents in the record on appeal will depend upon the policy of the Sixth Circuit.
- (b) Notice. When a sealed document is filed, ECF provides notice of electronic filing to all parties in the case. A sealed document will not be available electronically to parties, attorneys or the public. The sealed document will be available electronically to the Court. The filing party must use alternate forms of service to provide any parties entitled to notice with copies of the sealed document.
- (c) Docket Sheet Entries. When a sealed document is filed, an entry appears on the public electronic docket sheet. The parties, attorneys and the public do not have electronic access to the sealed document.
- (d) Motion to Unseal. A motion to unseal or obtain a copy of a sealed document may be made on any legal grounds.
- (e) Privacy Policy. Federal rules support compliance with the E-Government Act. *See* Fed. R. Civ. P. 5.2; Fed. R. Crim. P. 49.1. Parties and their attorneys are responsible under the rules for preventing disclosure of certain confidential information in case filings. **The clerk does not review case filings for compliance or independently redact or seal noncomplying filings.**

8.2 EX PARTE DOCUMENTS

- (a) Procedure.
 - (1) *Ex parte* Motion. A party seeking to file an *ex parte* motion shall electronically file an *ex parte* motion with attachments.
 - (2) Parties must ensure an *ex parte* motion is proper in light of the substantive, procedural and ethical rules that apply in the context of the filing.
- (b) Docket Sheet Entries. When an *ex parte* motion is filed, an entry appears on the public electronic docket sheet. An *ex parte* motion and attachments are not available electronically or by any other means to the parties, attorneys or the public.

8.3 DOCUMENTS IN A SEALED CASE

- (a) Procedure.
 - (1) **Motion to Seal Case.** A party seeking to seal a case shall electronically file a motion to seal. The motion must state why sealing is required and whether redaction could eliminate or reduce the need for complete sealing.
 - (2) **Criminal Motion to Seal Case.** A criminal motion to seal, any attachments to the motion, and any response or reply thereto, will not be available electronically or by any other means. The filing party must use alternate forms of service to provide any parties entitled to notice with a copy of the document filed in a criminal case.
 - (3) **Order.** When a motion to seal a case is granted, the case will not be available electronically or through any other means to the parties, attorneys or the public.
- (b) Filing a Document in a Sealed Case. A document filed in a sealed case must be filed with the court on paper in a sealed envelope marked “sealed” citing thereon the style of the case and case number. The clerk may require the document to be accompanied by a CD-ROM containing the document in a PDF format.
- (c) Notice. When a document is filed in a sealed case, ECF will not provide a notice of electronic filing. The document will not be available electronically to parties, attorneys or the public. The document will be available electronically to the Court. The filing party must use alternate forms of service to provide any parties entitled to notice with copies of the document.
- (d) Motion to Unseal. A motion to unseal a case or obtain a copy of a document in a sealed case may be made on any legal grounds.

9. SPECIAL FILING REQUIREMENTS AND EXCEPTIONS.

9.1 SPECIAL FILING REQUIREMENTS

The documents listed below shall be presented for filing on paper. The clerk may require the document be accompanied by a CD-ROM containing the document in a PDF format:

Documents in sealed cases
In Camera
Ex parte documents in sealed cases
Qui Tam Cases (under seal)

9.2 EXCEPTIONS

All documents shall be filed electronically unless otherwise ordered by the Court or specifically exempt herein.⁴

9.2.1 MANDATORY EXCEPTIONS

The following documents are excluded from the Electronic Filing System and shall be filed solely on paper, unless otherwise ordered by the court:

ADMINISTRATIVE RECORDS

PLEA AGREEMENTS

ALL GRAND JURY MATTERS - SUCH AS:

- (a) Minute sheets of swearing in and impanelment
- (b) Grand Jury returns
- (c) Voting slips
- (d) Any requests to be excused from grand jury for medical or some other reason and the Order appointing alternate
- (e) Motions to quash subpoenas and orders ruling on them
- (f) Motions to enforce subpoenas and orders ruling on them
- (g) Motions for immunity and orders ruling on them
- (h) Motions for appointment of counsel and orders ruling on them.

⁴Because large documents may not upload properly to ECF or download within a reasonable amount of time, documents must be broken down into five (5) megabyte segments. Documents over five (5) megabytes will be rejected by ECF.

WARRANTS OF ANY KIND (e.g., arrest, seizure, etc.)

CRIMINAL SUMMONS

PEN REGISTERS, (wire tap orders)

CRIMINAL SUBPOENAS (issued or returned - executed or unexecuted)

PRE-INDICTMENT/PRE-INFORMATION:

- (a) Complaint filed by U. S. Attorney on behalf of Federal agents or by Federal Agents themselves.
- (b) Affidavits accompanying complaints usually signed by the Federal agent.
- (c) Warrants 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 the other district on a Rule 40 transfer.

CONSENT TO PROCEED BEFORE U. S. MAGISTRATE JUDGE

(if not signed by all parties). Consents signed by all parties may be filed electronically.

CJA APPOINTMENT VOUCHERS AND CJA 23 (FINANCIAL AFFIDAVIT)

10. RETENTION REQUIREMENTS.

- (a) 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. On request of the court, said counsel must provide the original document for review.
- (b) The clerk's office may choose to discard certain documents brought to the clerk's office for filing in paper form after those documents are scanned and uploaded to the System. Therefore, counsel shall provide the court with a copy of the original documents with intrinsic value for scanning and maintain the original signature in accordance with 10(a).
- (c) Pursuant to Fed.R.Civ.P. 5(d) disclosures under Rule 26(a)(1) or (2) and discovery material must not be filed until they are used in the proceeding or the court orders filing. Pursuant to LR 26.1(b), the party responsible for service of a discovery document not filed of record, including disclosures, notices, interrogatories, requests and answers or responses thereto, shall be the custodian and must retain the original document. The custodian must provide access to all parties of record during the pendency of the action.

11. SIGNATURES.

- (a) The user login and password required to submit documents to the Electronic Filing System serve as the Filing User 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 Joint Local Rules of this court and any other purpose for which a signature is required in connection with proceedings before the court.
- (b) 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 L.R. 5.1(a), and must set forth the name, address, telephone number, fax number, and email address. 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. A handwritten signature is required for any document filed in paper.

No Filing User or other person may knowingly permit or cause to permit a Filing User password to be used by anyone other than an authorized agent of the Filing User.

- (c) 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.
- (d) A document requiring signatures of more than one party must be filed either by:
 - (1) electronically filing a scanned document containing all necessary signatures; or
 - (2) representing the consent of the other parties on the document; or
 - (3) identifying on the document the party whose signature is required and by the submission of a notice of endorsement by the other parties no later than seven (7) days after filing; or
 - (4) any other manner approved by the Court.
- (e) 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; or the authenticity of an electronically filed document containing multiple signatures or the authenticity of the signature themselves, must file an objection to the document within fourteen (14) days of service of the document.
- (f) Any party challenging the authenticity of an electronically filed document or the attorney's signature on that document must file an objection to the document within fourteen (14) days of service of the document.

- (g) If a party wishes to challenge the authenticity of an electronically filed document or signature after the fourteen (14) day period, the party shall file a motion to seek a ruling from the court.

12. SERVICE OF DOCUMENTS BY ELECTRONIC MEANS.

12.1 SERVICE OF PROCESS

Federal Rules of Civil Procedure 5(b) and the Federal Rules of Criminal Procedure 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 Electronic Case Filing System will automatically generate and send a Notice of Electronic Filing (NEF) to all Filing Users associated with that case, along with a hyperlink to the electronic document. Transmission of the Notice of Electronic Filing with a hyperlink to the electronic document constitutes service of the filed document.

When a sealed document is filed, ECF provides notice of electronic filing to all parties in the case. A sealed document will not be available electronically to parties, attorneys or the public. The filing party ***must use*** alternate forms of service to provide any parties entitled to notice with copies of the sealed document.

The NEF must include the time of filing, the date the document was entered on the docket, 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 email to retrieve the document automatically. If the Filing User becomes aware that the NEF 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 email, hand, facsimile, or by first-class mail postage prepaid immediately upon notification of the deficiency of the NEF.

12.2.2 Individual who is not a Filing User

A non-registered participant 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 Joint Local Rules.

12.3 TIME TO RESPOND UNDER ELECTRONIC SERVICE

In accordance with Rule 6(e) of the Federal Rules of Civil Procedure and Rule 45(c) of the Federal Rules of Criminal procedure, service by electronic means is treated the same as service by mail for the purposes of adding three (3) days to the prescribed period to respond.

13. FEES PAYABLE TO THE CLERK.

Any fee required for filing a pleading or document in District Court is payable upon filing of the document. Filing Users will be automatically directed to the Department of Treasury's internet payment process when filing any pleading or document which requires a fee. The receipt of the fee will be indicated in the text of the docket entry. The court will not maintain electronic billing or debit accounts for litigants.

A refund of a fee collected upon filing is generally prohibited. In the event a fee is erroneously collected electronically via credit card, the refund will be processed through the electronic credit card system. The court will not issue a refund by check. A Filing User shall request a refund by written application to the court.

14. TECHNICAL FAILURES.

- (a) If the site is unable to accept filings continuously or intermittently for more than one (1) hour occurring after 12:00 noon Eastern Time that day, the clerk shall deem the court's Electronic Case Filing web site to be subject to a technical failure.
- (b) If a Filing User experiences a technical failure as defined herein, the Filing User may submit the document to the clerk of court, provided that the document is accompanied by a certification signed by the Filing User, that the Filing User has attempted to file the document electronically at least twice, with those unsuccessful attempts occurring at least one (1) hour apart after 12:00 noon Eastern Time that day. The clerk may require the document to be accompanied by a disk or CD-Rom which contains the document in .pdf format.
- (c) The initial point of contact for a Filing User experiencing technical difficulty filing a document electronically will be the court's ECF Help Desk at the numbers listed on the court's web site and in the ECF User Manual.
- (d) A Filing User who suffers prejudice as a result of a technical failure as defined herein or a Filing User who cannot file a time-sensitive document electronically due to unforeseen technical difficulties, such as the malfunctioning of a Filing User's equipment, may seek relief from the Court.

15. PUBLIC ACCESS.

- 15.1 (a) A person may receive information from the Electronic Filing System at the court's Internet site by obtaining a PACER login and password.⁵ A person who has PACER access may retrieve docket sheets and documents (unless otherwise sealed or restricted) in criminal and civil cases except for social security appeals and immigration cases, in which only a Filing User who is counsel in the case may retrieve documents electronically. Documents in social security appeals and immigration cases are not available for public view over the Internet in accordance with Fed.R.Civ.P. 5.2(c). Any case or document under seal shall not be available electronically or through any other means.
- (b) If a case or document has been restricted, a PACER user may retrieve the docket sheet over the Internet, but only a Filing User who is counsel of record may retrieve restricted documents electronically. However, a restricted case or document will be available for viewing by the public at the clerk's office.
- (c) Electronic access to electronic docket sheets and all documents filed in the System, unless sealed, is available to the public for viewing at no charge during regular business hours at the clerk's office. A copy fee for an electronic reproduction is required in accordance with 28 U.S.C. 1914.
- (d) 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.

15.2 SENSITIVE INFORMATION

Since 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. Federal rules⁶ support compliance with the E-Government Act. Parties and their attorneys are responsible under the rules for preventing disclosure of

⁵Pursuant to the Judicial Conference Electronic Public Access Fee Schedule, non-judiciary CM/ECF users will be charged a fee of eight cents per page obtained remotely through the PACER system, with a total for any document, docket sheet, or case-specific report not to exceed the fee for 30 pages. (Effective January 1, 2005) However, transcripts of federal court proceedings shall not be subject to the thirty-page fee limit.

The access fee does not apply to official recipients of electronic documents, *i.e.*, parties legally required to receive service or to whom service is directed by the filer in the context of service under Federal Rules of Civil Procedure. Official recipients will receive the initial electronic copy of a document free to download as they see fit, but if they remotely access the document again, they will be charged eight cents per page.

⁶*See* Fed. R. Civ. P. 5.2; Fed. R. Crim. P. 49.1.

certain confidential information in case filings. **The clerk does not review case filings for compliance or independently redact or seal noncomplying filings.**

CIVIL. The court recognizes that parties may need to include in the record a document containing information such as driver’s license number; medical records, treatment and diagnosis; employment history; individual financial information; and proprietary or trade secret information.

CRIMINAL. The court recognizes that parties may need to include in the record a document containing information implicating not only privacy but also personal security concerns, such as a driver’s license number; medical records, treatment and diagnosis; employment history; individual financial information; proprietary or trade secret information; information regarding an individual’s cooperation with the government; information regarding the victim of any criminal activity; national security information; and sensitive security information as described in 49 U.S.C. § 114(s). When filing a document that contains any such information, counsel may want to consider accompanying the filing with a motion to seal. Until the court has ruled on any motion to seal, no document that is the subject of a motion to seal, nor the motion itself or any response or reply thereto, will be available electronically or in paper form.

Nothing in this policy changes any rules or policies with respect to sealing or redaction of court records for any other purpose. A party may:

- (a) **Restricted Case.** File a “Motion to restrict case”. The motion must state the reason and show good cause for restricting remote access to the case. If the motion is granted, remote access to documents will be limited to Filing Users who are counsel of record. However, the case will be available for viewing by the public at the clerk’s office.
- (b) **Exhibits.** File an exhibit containing sensitive information as an attachment to a pleading entitled “Notice of Filing Restricted Exhibit”.⁷ The notice and the attached exhibit shall be filed as a separate docket entry, rather than as an attachment to the pleading supported by the exhibit. Remote public access to the notice and exhibit will be limited to Filing Users who are counsel of record. The notice and exhibit will, however, be available for viewing by the public at the clerk’s office.

Counsel are strongly urged to share this information with all clients so that an informed decision about the inclusion, redaction, and/or exclusion of certain materials may be made.

⁷Reference the courts’ ECF User Manual for technical instructions regarding electronic filing of the Notice of Filing Restricted Exhibits. The courts’ ECF User Manual is available through the courts’ web sites at www.kywd.uscourts.gov, www.kyed.uscourts.gov or can be obtained from any division of the court.