

United States District Court
Eastern District of California

CM/ECF

Final Procedures

SUMMARY

In order to improve court record accessibility, reduce paper filings and the cost involved in traditional filing and service, the United States District Courts have been tasked with developing and implementing electronic filing, service and storage of documents (CM/ECF). On January 3, 2005, the Eastern District of California will become an electronic filing and service district. With limited, specified exceptions, CM/ECF participation is required for those attorneys who litigate in federal court. At least for the present time, pro se litigants will continue to file paper documents which will then be scanned into the electronic data base.

Our district is not the first to undergo this truly epic change in the way of processing, maintaining and accessing court records. The districts which have pioneered electronic filing have reported that CM/ECF has changed for the better internal court processing of documents, as well as litigant access to filing and information retrieval. Moreover, filing and service of court documents at the click of a mouse have the potential to save litigants time and money. All one will need is computerized word processing, readily available software which will transform electronic documents into .pdf format, and preferably, high speed access to the internet. Having access to an efficient scanner is also highly recommended.

These Procedures are intended to be a specific overview of CM/ECF in the Eastern District of California, and will be implemented by inclusion in the Local Rules, where appropriate, and as directions in a CM/ECF users manual or internal Clerk's Office policies. Any change to the local rules will be performed in accordance with ordinary practice.

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A. INTRODUCTION

1.0 Procedures in General. CM/ECF stands for Case Management/Electronic Case Filing. Districts implementing CM/ECF electronically manage their case files, i.e., the case files are stored in a data base and not in paper (CM), and filings in court are performed, to the extent possible, electronically in lieu of paper (ECF). The Clerk's Office for the United States District Court for the Eastern District of California has been engaged in CM/ECF research, development and implementation since August of 2002. During this process court personnel have visited multiple court sites and amassed a large volume of information regarding CM/ECF and its implementation in different courts. Model local rules for electronic filing have been studied. Finally, the court has sought widespread comment from the bar. Based on this information the court has formulated these procedures for the implementation of CM/ECF in the Eastern District of California.

2.0 100% Electronic Filing for Lawyers; Pro Se Litigants to File Paper. With specified, limited exceptions, beginning Monday, January 3, 2005, electronic filing must be utilized by attorneys in all cases. "Electronic filing" includes the various forms of filing other than by paper set forth in Section C 7.0 (Document Preferences), e.g., direct filing via the internet, bringing a CD to the Clerk's Office (although in-person filings are discouraged). While it is possible for attorneys to seek to be relieved from electronic filing requirements by individual judges, such permission should be infrequently granted if all other attorneys and the Clerk's Office are to receive the benefits of electronic filing. Until further CM/ECF experience is gained, pro se litigants will continue to file paper documents (which will then be scanned into the court's electronic data base).

Exceptions to Electronic Filing.

3.0

Attorney Exceptions. In exceptional circumstances and for specific documents, an attorney may apply to the assigned judge for permission to file documents in paper format. The decision to permit paper filing is in the sole discretion of the assigned judge. Any request to file paper documents must be made no less than five days prior to the date a document would otherwise be due to be filed. Permission to file paper may be revoked at any time by the assigned judge. As discussed previously, however, paper filings will be scanned, and the electronic format will become the official court record unless otherwise ordered by the assigned judge. The paper filing will ultimately be discarded. See A 4.0 below.

The Clerk's Office will not refuse to file a proffered paper document. The Clerk's Office will scan it and notify the court it was filed in improper format. Subsequent to twenty-one (21) days after CM/ECF implementation, an OSC may be issued regarding an attorney's ignoring the requirement to utilize electronic filing, or otherwise violate these procedures.

Pro Se Parties. Any person appearing pro se may **not** utilize electronic filing except

with the permission of the assigned judge. Pro se litigants, whether or not their litigation is assigned as a pro se case ("PS"), shall file and serve paper documents as required by applicable rules of civil or criminal procedure, or the local rules of this district. After gaining experience with CM/ECF, the Court may permit pro se litigants to utilize electronic filing at some time in the future.

4.0 Retention of Paper Files. For a trial period of two years, the Clerk's Office shall maintain a temporary, chronological file of paper filings. That is, the retention of paper documents will not be by case number (the official and complete court record for all 2005 cases and afterwards is the electronic record, see Section 3.0, Provisions Governing All Cases), but the file will be maintained by day of filing. Each day's filing will be maintained for a minimum of one year and will be destroyed thereafter. The Clerk's Office shall institute practices which ensure the integrity of the chronological filings during the one year retention period.

For cases which straddle the commencement of CM/ECF, i.e., those that have paper files prior to January 3, 2005, the Clerk's Office will determine upon time of archival whether all such pre-2005 paper files will be scanned to electronic format such that the entire case will be archived electronically.

Retention of sealed paper documents shall be governed by the sealed documents procedures.

5.0 Correspondence. Non-case related correspondence is not governed by these procedures. When appropriately sent, case related correspondence submitted by attorneys shall be transmitted to the e-mail address of the pertinent courtroom deputy clerk. The assigned Judge or Magistrate Judge to whom the correspondence is addressed will determine whether such correspondence should be filed.

B. ADMINISTRATIVE PROVISIONS

1.0 Attorney Registration for Electronic Filing. All attorneys who wish to file documents in the Eastern District of California must be admitted to practice or admitted to appear pro hac vice. Admission to practice in the Eastern District of California includes the requirement that the attorney complete an e-filing registration form and receive a username and password. Completion of the registration form will permit electronic filing of documents and, unless an attorney opts out, will authorize acceptance of service by electronic means. To do this an attorney must have a valid internet e-mail address. After registration, attorneys will receive a unique user name and password. Registration enables an attorney to file documents on the court website. The court registration name and password when utilized for the electronic filing of documents with the court will serve as the party's signature for F.R.C.P. Rule 11 purposes. See also Signature Section C15.0. In conjunction with the court filing registration requirement, registration for PACER, see section 1.2 below, is also

mandated in order to permit an attorney or litigant to access images of documents maintained within court electronic records.

1.1 Consent to Service. Unless an attorney opts out by designating such on the registration form, registration as a filing user constitutes: (1) consent to receive service electronically and waiver of the right to receive service by first class mail pursuant to Federal Rule of Civil Procedure 5(b)(2)(D) and Federal Rule of Criminal Procedure 49; (2) consent to making electronic service and waiver of the right to make service by personal service or first class mail pursuant to Federal Rule of Civil Procedure 5(b)(2)(D). This consent pertinent to Rule 5 does **not** affect service of a summons and complaint pursuant to Federal Rule of Civil Procedure 4, i.e., there is no electronic service of a complaint or other case initiating document. Waiver of service and notice by first class mail applies to notice of the entry of an order or judgment. Service by electronic means is complete upon transmission of the Notice of Electronic Filing.

Although the Eastern District of California does not require attorneys to serve and/or accept service of documents by electronic means, the court **strongly encourages** the use of this practice.

1.2 PACER Registration Required. Documents already on the Court's servers are accessed by users and the public through the Public Access to Court Electronic Records ("PACER") Service Center. In order to utilize CM/ECF to review documents, a PACER login is required, *in addition to*, the password issued by the court for filing purposes. To register for PACER, a user must complete the online form or submit a registration form, available on the PACER web site (<http://pacer.psc.uscourts.gov>). Again, the PACER user name and password is distinct from that given by the court.

1.3 Credit Card Payment. All fees related to electronically filed documents via the internet, e.g., complaint, should be paid for by use of credit card on the court's secure servers. In those circumstances where credit card payment cannot be made, fees may be paid for by check or money order; however, where payment of fees is required, the document will not be filed on the court's internal servers until payment is tendered.

C. PROVISIONS GOVERNING ALL CASES

1.0 Filing In General. All initially filed documents, and subsequent motions, pleadings, applications, briefs, memoranda of law, exhibits, deposition transcripts, transcripts of proceedings, or other documents in a case shall be electronically filed except as otherwise provided by these procedures.

2.0 Initial Civil Case Filing Procedures. Attorneys – Fee Paid or Not Applicable. Initial case filings by attorneys in civil actions (includes prisoner and habeas corpus cases) shall be performed electronically. Generally, when filing via the internet:

1. The attorney will log into CM/ECF and submit all initiating civil case documents in .pdf format. This will create a temporary file with the case type of “AT.”
2. In civil actions where payment is necessary, the party will either enter credit card information or state that payment is being transmitted to the Clerk’s Office immediately referencing the “AT” case number.
3. When the docket clerk processes payment, or if payment is not applicable (generally proceedings initiated by the United States), the “AT” case will be converted to a permanent civil case.
4. The attorney will be noticed that the case has been filed and will receive the new case number and the standard case opening documents electronically. Summonses in civil actions will be issued automatically and returned electronically.

Once the proper administrative procedures have been performed, the docket shall reflect that the case was filed as of the date the attorney made electronic input so long as filing fee payment was tendered with the input or was otherwise not applicable. If payment is submitted by other means, the docket shall reflect the date that payment was received as the filed date. See L.R. 77-121. For complaints accompanied by motions requesting immediate injunctive relief, the Clerk’s Office shall assign a Judge and Magistrate Judge immediately and ensure that the initial filings are communicated to the appropriate, assigned judges forthwith provided the filing fee has been received.

If the attorney files a CD or other electronic media in lieu of internet filing, summonses and other initial court documents will be electronically issued upon uploading of the CD into the CM/ECF server.

Removal cases shall be filed using the general procedure set forth above. Again, the docket shall reflect that removal occurred at the time of electronic input and tender of payment. See Section D 3.0.

2.50 Initial Civil Case Filing Procedures. Attorneys–In Forma Pauperis.

1. The attorney will log into CM/ECF and submit an IFP Application and all initiating civil case documents in .pdf format. This will create a temporary file with the case type of “FP.”

2. The docket clerk will monitor the Daily Activity Report for new “FP” cases and will process the IFP application for approval or rejection as well as open a permanent civil case.
3. If the IFP application is granted, the attorney will receive the new case number and the standard case opening packet electronically. Any summonses requested will be issued and returned electronically. If the IFP application is denied, the attorney will receive notice of such electronically.

Once an IFP application is granted, the docket shall reflect that the case was filed as of the date the attorney made electronic input and sought to proceed in forma pauperis. For complaints accompanied by motions requesting immediate injunctive relief, the Clerk’s Office shall assign a Judge and Magistrate Judge immediately and ensure that the initial filings are communicated to the appropriate, assigned judge forthwith.

Death Penalty habeas corpus initial filings shall be communicated to the appropriate assigned judge immediately.

3.0 Official Case Record. Except as provided by these procedures, the official court record in all cases filed after January 3, 2005 will be the electronic case file. For cases commenced prior to January 3, 2005, all documents filed up to January 3, 2005 will be maintained in paper format; all documents filed after January 3, 2005 will be maintained in electronic format. The official court record in these cases would be paper to January 3, 2005 and electronic thereafter. However, in any case commenced after January 3, 2005, where permitted by these procedures, the official record shall include any paper documents.

In those cases where paper filings have been authorized, a judge may order that the paper filings be maintained indefinitely in a case file to be preserved by the Clerk’s Office until archival, and may also order that the paper file created be the official record of the court.

4.0 Filing Complete. E-mailing a document to the Clerk’s Office or to the assigned judge (as opposed to internet electronic filing) does not constitute “filing” of the document. Except as noted above for the filing of initial documents, a document filed electronically shall not be considered filed for purposes of the Federal Rules of Civil Procedure until the filing party receives a system-generated “Notice of Electronic Filing.” See 6.0 below.

Paper filings, when permitted or required by these procedures, shall be complete upon presentation to the Clerk’s Office.

5.0 Time of Filing. A document will generally be deemed filed on a particular day if filed prior to midnight (Pacific Time) on that business day. However, if in filing a

document, the time of day at which the document is filed is of the essence, the assigned judge may order that document be filed by a time certain.

Filings via the internet may be made twenty-four hours a day. However, if an attorney desires to file a CD or other electronic media over the counter at the Clerk's Office, the CD must be submitted during Clerk's Office business hours. **Electronic media may not be submitted in the Court's after-hours drop box.**

6.0 Electronic Service. CM/ECF supports automatic email service that provides potential savings in labor, copying and postage costs to both the court and the bar. "Notice of Electronic Filing" is a notice automatically generated by CM/ECF at the time a document is filed with the system, and in cases where counsel have consented, see Section B 1.1, will constitute automatic service of the document. This Notice will set forth the time of filing, the name of the parties and attorney(s) filing the document, the type of document, the text of the docket entry, the name of the parties and/or attorney(s) receiving the notice, and an electronic link (hyperlink) to the filed document which allows recipients to retrieve the document automatically. Service via electronic noticing constitutes service pursuant to F. R. Cv. P. 5(b)(2)(D) and F. R. Cr. P. 49. If parties are not registered for the CM/ECF system, e.g., prisoners or pro se litigants, the notice will state that those parties were not electronically served. It is the duty of counsel to serve these parties in accordance with the appropriate federal rules of procedure.

Pro se parties may not rely on electronic service and must serve documents as otherwise provided by the Rules.

7.0 Document Preferences. As set forth previously, attorneys will generally file documents in court by directly accessing the court filing website, preferably in the following order:

- (1) direct electronic filing, via the internet, of the .pdf document created from a word processing file.
- (2) direct electronic filing, via the internet, of the .pdf document that had been scanned from a paper document.

Filers may not file encrypted .pdf documents with the court. All Adobe Security Functions are prohibited and if used, will generate the following error message when the filer attempts to upload the document:

"ERROR: Document is not a well-formed .pdf document (no further information is available)."

The court strongly encourages direct filing via the internet; however, when other type of electronic filing must be made, there are several methods of submitting an electronic document to the court. Based upon the size, search-ability and the E-Government Act

of 2002, the court's preference (and probably users as well) for document submission is:

(1) Electronic filing, by delivery to the court, of the .pdf document saved on floppy disk, CD, DVD or portable digital media, e.g., memory stick, readable by the court and created from a word processing file.

(2) Electronic filing, by delivery to the court, of the .pdf document that was saved on floppy disk, CD, DVD, or portable digital media, e.g., memory stick, readable by the court and after being converted from paper by a scanning process.

When permitted by these procedures, submission of documents to the court may be by:

(1) Paper.

8.0 Declarations, Affidavits, Exhibits; Size Guidelines for Exhibits in Electronic Format. Unless otherwise permitted, all exhibits (includes declarations, affidavits and the like) must be submitted in electronic format. While there is no presumptive page limit on exhibits that may be submitted to the court in electronic format, *scanned* attachments and exhibits larger than 50 pages should be filed electronically in separate 50 page segments. If a word processing document that has been converted to .pdf is submitted as an exhibit (as opposed to scanned), it should be divided into 100 page attachment files.

Filing segments greater than the above limitations (approximately 1.5 megabytes) will result in a rejected filing as the system is not normally set to receive larger segments.

8.1 Scanning Exhibits. When a party scans exhibits for filing with the court, (remember, scanning will create a "larger" electronic document which requires more time to transmit and takes up more storage), the majority of exhibits (black and white documents) should be scanned in black and white with a scanner configured at 200 dots per inch (dpi), if possible. (Higher resolutions take too much electronic file space and are slower to load/upload, while lower resolutions will provide a poor quality document). Documents appearing in color in their original form, such as color photographs, may be scanned in color and then uploaded to the System. The filing party is required to verify the readability of scanned documents before filing them electronically with the court. Originals of documents requiring scanning, and which are filed electronically, must be retained by the filing party and made available, upon request, to the Court and other parties, for a period of no less than one year following the expiration of the action or appeal therein. If law, including state law concerning attorney practice, or the needs of the case require further retention, attorneys shall retain the originals for the necessary period.

Parties anticipating to file many attachments or exhibits in color should seek special procedures for filing at the time of a scheduling conference, or from the Court at reasonable time prior to the due date of the filing. These procedures

could include an exemption from the usual electronic size of a filed document or filing in paper.

8.2 Conventional (Paper) Submission. If a party, for exceptional circumstances, believes submission of exhibits must be in paper format, the party must apply to the assigned judge for an exemption to the requirement for electronic submission. Any such application must be filed in the appropriate Judge's or Magistrate Judge's chambers no less than five court days prior to the date the filing is due. When exhibits are submitted in paper format, the party shall electronically file, a one page .pdf document entitled Notice of Attachment referencing the electronically filed pleading, motion etc. pertinent to the Notice that states exhibits are being submitted in paper format. The Notice shall specify the order permitting filing in paper. This will enable the docket to reflect that documents are being held temporarily, or otherwise as ordered, in the Clerk's Office in paper format. The party shall also file a CD or other appropriate media containing the filed exhibits for Clerk's Office use.

Unless the assigned judge orders otherwise, see section 3.0, no court file containing the paper exhibits shall be maintained, and the exhibits shall be placed in the chronological paper file and discarded after a one year period.

9.0 Chambers Courtesy Paper Copies. A party who electronically files any document (excluding attachments or exhibits) in excess of 25 pages must also provide a courtesy paper copy to the appropriate chambers. A party who electronically files attachments or exhibits which total in excess of 50 pages must also provide a paper courtesy copy to chambers.

The courtesy copy must be mailed or otherwise sent to the pertinent deputy courtroom clerk no later than the next business day following the electronic filing. *All courtesy copies shall be labeled as such in capital letters on the face sheet of the courtesy copy.* Chambers will have no obligation to retain the courtesy copies.

10.0 Filed Paper Documents. As indicated throughout these procedures, initial filings, certain types of cases or the status of certain litigants will require the filing of paper documents. Except as provided by these procedures, the Clerk's Office will discard all original documents brought to the Clerk's Office for filing after they are scanned and uploaded to the System, and after they have been maintained in a chronological file for a one year period. A litigant who wishes to have an original document returned after the Clerk's Office scans and uploads it to the System may, prior to submitting the document to the Clerk's Office, seek authorization from the assigned Judge or Magistrate Judge for the document's return. Authorization will be granted at the discretion of the assigned judge. No blanket requests for authorizations for the return of all original documents filed by a litigant or attorney will be accepted.

11.0 Documents Requiring Leave of Court. If filing a document requires leave of court, such as an amended complaint when an answer is on file, the attorney shall attach the document proposed to be filed as an exhibit to the motion/application, and a proposed order compatible with the Order Processing Procedures (see below). If the Court grants the motion, the order will direct the attorney to file the document electronically with the Court.

12.0 Proposed Orders. In any circumstance where a proposed order is submitted to the court, the party proposing the order must separately, electronically submit it via ECF thereby effecting service on all other parties. Electronically submitted proposed orders may not be combined into a motion or request. In addition to electronically filing the proposed order in .pdf format, the proposing party must also file a separate proposed order in word processing format. All are advised that the Court currently uses Word Perfect 10.0. Parties should save proposed orders in a format compatible with Word Perfect. (Users of more recent editions of Word are generally able to do this).

13.0 Order Processing. Orders will be generated by chambers and converted to .pdf, or generated in .pdf format by forms in CM/ECF. The assigned Judge, Magistrate Judge or designee will electronically file all signed orders. 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 it been entered on the docket conventionally.

The assigned Judge or Magistrate Judge, or deputy clerk, if appropriate, may grant routine orders by a text-only entry upon the docket. In such cases, no .pdf document will issue; the text-only entry shall constitute the court's only order on the matter. The System will generate a "Notice of Electronic Filing" as described in these procedures for purposes of service.

14.0 Sealed Documents.

14.1 In General. All attorneys and parties must request that documents be sealed. Requests to seal must be made even in those situations where federal law requires the sealing of the document. The Court should be made aware of a requirement for sealing in the request.

Pro se parties must submit documents to be sealed by paper filing along with an application or motion indicating that the documents should be filed under seal. The Clerk's Office shall scan the sealed documents but maintain the electronic documents on a part of the server that limits access only to authorized individuals until a Judge or Magistrate Judge acts on the application or motion. If the application or motion is denied, the temporarily sealed documents shall be made public. In any event, unless a judge orders otherwise, the paper documents filed under seal shall be returned to the submitting party.

When a formerly sealed document or case file is ordered unsealed, the Clerk's Office shall make it available to the public as any other publicly filed document.

14.2 Document Requested to Be Filed Under Seal (Electronic Filers).

Subject to the following paragraph, electronic filers shall file an application or motion to file a document under seal electronically. A proposed order must be filed electronically along with the application or motion, unless the attorney believes both a public and nonpublic order should issue, in which case the attorney may present the nonpublic version of the order in paper format to the Clerk.

If an attorney believes all or part of an application or motion to file a document under seal should not be made available to the public in an electronic filing, the attorney may present the nonpublic portion of the application or motion in paper format to the Clerk, who will give it to the appropriate Judge or Magistrate Judge for *in camera* consideration of the sealing request. A nonpublic version of the proposed order must be presented in paper format to the Clerk along with the nonpublic portion of the motion to seal.

If an application or motion to file a document under seal is granted, the Judge or Magistrate Judge will enter electronically an order authorizing the filing of the document under seal. The Clerk's Office shall scan the sealed documents but maintain the electronic documents on a part of the server that limits access only to authorized individuals. Unless a judge orders otherwise, the paper documents filed under seal shall be returned to the submitting party. When a formerly sealed document or case file is ordered unsealed, the Clerk's Office shall make it available to the public as any other publicly filed electronic document.

14.3 Document Filed Ex Parte Under Seal. A motion to file a document ex parte under seal shall be clearly designated ex parte and presented to the Clerk in paper format along with a proposed order. If the motion is granted, the Judge or Magistrate Judge will enter electronically an order authorizing the filing of the document under seal. The Clerk's Office shall scan the sealed documents but maintain the electronic documents on a part of the server that limits access only to authorized individuals. Unless a judge orders otherwise, the paper documents filed under seal shall be returned to the submitting party. When a formerly sealed document or case file is ordered unsealed, the Clerk's Office shall make it available to the public as any other publicly filed electronic document.

15.0 Signatures in General. In general, all users of CM/ECF who have access to the system will have a login and a password. This login, password and a signature consisting of a "/s/ - First Name- Last Name" will constitute the "signature" of the user for purpose of CM/ECF.

15.1 Attorney's Signatures. Anything filed using an attorney's name, login and password will be deemed to have been signed by that attorney for all purposes, including Fed. R. Civ. P. 11. For example, for the attorney whose login and password is being used, it is sufficient to indicate a signature as in the following example: "/s/ John M. Barrister, Esquire." 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 twenty (20) days of receiving the Notice of Electronic Filing, or at a later time for good cause shown by an attorney exercising due diligence.

If a document is submitted to the Clerk's Office via CD or other portable electronic media, signatures shall appear either as a facsimile of the original (in a scanned document placed on a CD), or the attorney shall file a separate, scanned signature page in the event that the document was published to .pdf and then placed on a CD. In the latter situation, the docket shall reflect the submission of the signature page.

Attorneys are responsible for, and must take care to ensure, the validity of their signature as described above. Office policies must be instituted to ensure that only authorized persons have access to an attorney's login and password, and these persons must understand that nothing can be filed in the attorney's name without the attorney's express directive.

15.2 Documents Requiring Signatures of Multiple Attorneys. Pleadings and papers which are normally signed by more than one attorney, regardless of whether the attorneys represent the same party or different parties may be handled by obtaining approval from any other attorney to state that the other attorney has authorized him or her to sign the document on their behalf. The signing attorney shall annotate the other attorney's signature on the electronic filing as described above in Section 15.1. A second option is to obtain the original signatures from all attorneys who are filing the document, scan the signature page only and file it as an attachment to the document describing this procedure on the signature page of the filed document.

In any case where an attorney becomes aware that, by these procedures, he or she has consented to his or her signature being placed on a document or that he or she has signed a document, when in fact he or she has not signed or consented, it is the responsibility of that attorney to immediately notify the court and request that the document be stricken, but in no event, more than twenty (20) days after the filing unless good cause exists for a later contest of the signature by an attorney(s) exercising due diligence.

15.3 Non-Attorney's Signature - Documents which are required to be signed by persons who are not counsel of record in a particular case (verified pleadings,

affidavits, etc.), may be submitted in electronic format bearing a “/s/” on the signature line along with a statement by counsel that he or she has a signed original, e.g., “/s/ John Doe (original signature retained by attorney).” It is counsel’s duty to maintain this original signature. A non-filing signatory, party or attorney who disputes the authenticity of an electronically filed document with a non-attorney signature must file an objection to the document within twenty (20) days of receiving the Notice of Electronic Filing unless good cause exists for a later contest of the signature by an attorney or non-attorney exercising due diligence. The foregoing procedure may also be followed in cases where a hybrid electronic/manual procedure is in place, i.e., the manually served document may also contain an annotated signature in lieu of the original.

15.4 Signatures on Certain Documents in Criminal Cases. Several documents in criminal cases require the signature of a non-attorney, such as a grand jury foreperson, a defendant, a third-party custodian, a United States Marshal, an officer from Pretrial Services or Probation, or some other federal officer or agent. In general, the Clerk’s Office will scan these documents, upload them to the System, and except as otherwise provided by administrative procedures, discard them. The electronically filed document as it is maintained on the court’s servers shall constitute the official version of that record.

16.0 Privacy Concerns in General. Pursuant to the Judicial Conference Policy on Privacy and Electronic Access to Case Files, and the E-Government Act of 2002, Pub. L. No. 107-347, effective April 16, 2003, filing parties (court and attorney) shall omit or, where reference is necessary, partially redact the following personal data identifiers from all civil pleadings, documents, and exhibits, whether filed electronically or on paper, unless the assigned judge orders otherwise:

- a. Minors’ names: In criminal actions, use the minors’ initials; in civil actions use initials where federal or state law would *require* the use of initials, or where the specific identity of the minor is not necessary for the needs of the case or individual document;
- b. Financial account numbers: Identify the name or type of account and the financial institution where maintained, but use only the last four numbers of the account number;
- c. Social Security numbers: Use only the last four numbers;
- d. Dates of birth: Use only the year;
- e. All other circumstances where federal law would *require* redaction.

No other redactions are permitted unless the assigned Judge or Magistrate Judge has authorized the redaction. It is the attorney’s/litigant’s responsibility to be cognizant of federal privacy law, and where appropriate, state privacy law. Moreover, an attorney/litigant should recognize proprietary or trade secret information which is protected from dissemination by law. Where an attorney/litigant seeks to submit

protected information, a protective order should be sought.

Neither the Clerk's Office nor chambers will review attorney/pro se filed documents for compliance with privacy or other protective law, seal on its own motion documents containing personal data identifiers, or redact documents, whether filed electronically or on paper.

No procedure set forth herein will excuse a violation of privacy or other law.

16.1 Submission of Unredacted Documents. Pursuant to the terms of a protective order, or other law, an attorney or litigant ("party") may seek to submit an unredacted document containing protected information for review by the court. In such an event, the party is required to file electronically a motion or application to file the document under seal. (See Sealed Document Requirements). If the assigned Judge or Magistrate Judge grants the motion or application, the filing party shall then submit the unredacted paper document to the Clerk's Office for distribution and review by the appropriate judge. The paper document must have a cover page or notation on the first page stating the following: "Document filed under Seal."

17.0 Appeals in General. A Notice of Appeal should be filed electronically. It is not necessary to provide the court with paper copies of the notice for service on the other parties. The electronic notice generated by the system will constitute the copy the clerk is required to serve under Fed. R. App. P. 3(d). If the Notice of Appeal is electronically filed through CM/ECF, the required filing fee must be paid for by credit card. Again, manual service will be made upon, and by, pro se parties.

18.0 Trial Exhibits. Exhibits offered or admitted at trial will not be scanned or received electronically unless ordered by the court.

19.0 Settlement Statements. Settlement conference statements shall not be disclosed to the Judge or Magistrate Judge assigned to try the action unless the parties have agreed, and the judge has approved, that such judge will preside at settlement. Settlement conference statements may be e-mailed in .pdf format directly to the deputy courtroom clerk of the Judge or Magistrate Judge before whom the settlement conference is to be held, or may be submitted in paper to chambers. If the statement is confidential it must be clearly captioned to reveal its confidential character. If a party is submitting a confidential settlement conference statement the party must file in ECF a one page document entitled "Notice of Submission of Confidential Settlement Conference Statement," thereby effecting service of this notice on all other parties. The parties may agree, or not, to serve themselves with the settlement statements.

20.0 Technical Failures. The Clerk's Office shall deem the District 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. on a given day. Known systems outages will be posted on the web site, if possible. CDs or other electronic media may be filed with the Clerk's office during a time of technical failure.

A filing party whose filing is made untimely as the result of a technical failure of the court's ECF site must seek appropriate relief from the court. Except in extraordinary circumstances, or where the court has previously determined not to excuse untimely filings due to technical failures, or has mandated a paper filing due to the technical failure, the court will excuse untimely filings caused by the District ECF failure.

Problems on the filer's end, such as phone line problems, problems with the filer's Internet Service Provider (ISP), or hardware or software problems, will not constitute a technical failure under these procedures nor excuse an untimely filing. An attorney filer subject to mandatory electronic filing who cannot directly file a document electronically because of a technical problem on the filer's end must file the document in electronic format, e.g., CD, at the Clerk's Office. If electronic filing is not possible in any form, the party may file a paper document with the court and shall annotate on the cover page that electronic filing was not possible because of technical reasons.

D. CIVIL PROCEEDINGS

1.0 Civil Cases In General. Except as set forth herein and in Sections F, G, and H, civil proceedings will be governed by the preceding provisions applicable to all cases.

2.0 Administrative Records. Due to the usual size of administrative records, the submitting attorney shall, if possible, submit the administrative record in electronic format with a courtesy copy in paper to the assigned Judge or Magistrate Judge. If the party is unable to comply, the Clerk's Office will accept a certified paper copy lodged with the court and an ECF entry of Noticing of Lodging in Paper Format by the attorney. The administrative records will be maintained in the file room in paper format. The administrative records will be returned to the submitting attorney at the conclusion of the district court proceedings, if no appeal is filed, and after appeal or further proceedings in the district court as appropriate. Administrative record or trial transcript procedures for Social Security or habeas corpus cases are set forth in Sections F and G below.

Pro se parties shall submit the administrative records in paper if they have the obligation to file the administrative records.

3.0 Removed Cases. Removed cases are initiated pursuant to the same CM/ECF procedures in the same fashion as any other civil action would be initiated. The appropriate state court file records, see 28 U.S.C. §§ 1446(a), 1447(b), should be filed electronically via the internet, or as otherwise provided herein.

E. CRIMINAL PROCEEDINGS

1.0 Criminal Cases in General. Criminal Proceedings are defined as all felony and class-A misdemeanor actions that are opened as “CR” cases by the district court. In general, all documents submitted for filing in this district in a criminal proceeding commenced on or after January 3, 2005, shall be filed electronically in .pdf format using the Electronic Case File System (“ECF”), or, in infrequent circumstances, may be submitted for filing to the Clerk’s Office on electronic media as .pdf files.

As set forth in the General Provisions, pro se defendants will not be authorized to electronically file, but must submit and serve paper filings in accord with applicable rules.

2.0 Magistrate Judge Cases in General. Magistrate Judge Cases are defined as all complaints, initial Rule 40 appearances or class B and C misdemeanors also known as “Petty Offense Cases,” and all other actions where a “MAG” case is opened. In general, except for pro se defendants, all documents submitted for filing after January 3, 2005 shall be submitted in electronic format.

Until the District Court is responsible for transmitting statistics in cases generated via the Central Violations Bureau (CVB), and maintained as CVB cases, such cases are exempt from CM/ECF.

3.0 Mandatory Exceptions in Criminal Cases. Due to their unique nature, the following documents shall be filed in paper format and scanned into Electronic format by the district court:

1. Indictments / Informations
2. Arrest Warrants issued by a Judge or Magistrate Judge;
3. Search Warrants;
4. Seizure Warrants;
5. Pen Register authorizations and like documents;
6. Criminal Complaints;
7. Affidavits;
8. Rule 40 / 20 documents;
9. Writs ad testificandum and prosequendum;
10. Wiretap Proceedings

4.0 Juvenile Cases. Juvenile delinquency matters shall not be filed electronically.

F. SOCIAL SECURITY PROCEEDINGS

1.0 Social Security Cases In General. Absent a showing of good cause, all documents, notices, and orders in social security reviews filed in the District Court after ECF is implemented shall be filed and noticed electronically if plaintiff is represented by counsel. If plaintiff is not represented by counsel and is instead appearing pro se,

reference should be made to the requirements governing pro se filers described in these procedures.

2.0 Privacy Issues in Social Security Cases. To address the privacy issues inherent in a social security review, internet access to the individual documents will be limited to counsel and court staff. Docket sheets, however, will be available over the Internet to non-parties. Further, pro se litigants and non-parties will continue to have direct access to the documents on file at the Clerk's Office

3.0 Administrative Transcripts in Social Security Cases. Due to the size of administrative records, the Commissioner, if possible, should file social security administrative records in electronic format with a courtesy copy to the assigned Magistrate Judge's chambers in paper. If the Commissioner is unable to comply, the Clerk's Office will accept a certified paper copy lodged with the court and an ECF entry of Noticing of Lodging in Paper Format by the attorney. The administrative records will be maintained in the file room in paper format. The administrative records will be returned to the United States at the conclusion of the district court proceedings, if no appeal is filed, and after appeal or further proceedings in the district court as appropriate.

G. PRISONER CASE PROCEEDINGS

1.0 Prisoner Cases In General. A Prisoner Case is an action defined by the Local Rules as an action brought by a person in custody who is seeking habeas corpus relief (28 U.S.C. §§ 2241 et seq.), or any relief authorized by 42 U.S.C. § 1981 et seq. If the prisoner is represented by counsel, this section shall not apply. Parties represented by counsel in prisoner cases shall file documents electronically as defined above. However, counsel must serve a pro se prisoner by mail or other appropriate service. Pro se parties in prisoner cases must file and serve paper documents ("conventional filing").

2.0 Conventional Filing of Documents Defined. Conventional filing of documents means filing a paper copy with the office of the clerk. Documents filed conventionally with the office of the clerk may be filed via mail, in person, or by placing a copy of the document in the court's drop box (for Sacramento cases only). The conventional filing of documents is governed by the court's local rules. If a party requires a document to be conformed and returned to them, they must submit one additional legible conformed copy, and if mailed, a postage paid returned envelope. If a postage paid envelope is not received, documents cannot be returned to the filer.

3.0 All Conventionally Filed Documents Will be Scanned. Prisoner pro se filers shall file paper originals of all complaints, pleadings, motions, affidavits, briefs, and other documents. The Clerk's Office will scan these original documents into an electronic file in the ECF and after one year discard the original document. The scanned copy of the document will be the original document for all purposes and the

electronic case file will be the official court record.

4.0 Service in Prisoner Cases. It is the duty of the prisoner pro se filer to effectuate conventional service of documents upon parties pursuant to the Federal Rules of Civil and Criminal Procedure. Service of the Complaint for prisoners proceeding in forma pauperis will continue to be made by the Marshal pursuant to court order.

5.0 State Court Habeas Transcripts. Due to the size of state court records, the Attorney General should, if possible, file habeas corpus transcripts and other state court records in electronic format with a courtesy copy to the assigned judge's chambers in paper. If the Attorney General is unable to provide an electronic copy, the clerk's office will accept a certified paper copy lodged with the court and an ECF entry of Noticing of Lodging in Paper Format by the designated attorney. These state court records will be maintained in the file room in paper format. These records will be returned to the Attorney General at the conclusion of the district court proceedings, if no appeal is filed, and after appeal or further proceedings in the district court as appropriate. If the Attorney General and the Clerk's Office agree, the state court records may be discarded by the Clerk's Office.

H. PRO SE PROCEEDINGS

1.0 Pro Se Cases in General. As has been generally set forth in various other provisions of these Procedures, a party proceeding in propria persona, also referred to as pro se, only is excused from the requirement of filing documents electronically with the court. A pro se party only may file documents conventionally. Parties represented by counsel are referred to the Provisions Governing All Cases.

2.0 Service in Pro Se Cases. It is the duty of the pro se filer to effectuate conventional service of documents upon parties pursuant to the Federal Rules of Civil and Criminal Procedure. The scanning of documents and subsequent notice to attorneys of the filing of a document does not constitute service for documents filed in paper format pursuant to Rule 5 of the Fed. R. Civ. P.

As set forth in the Provisions Governing All Cases, even though attorneys will be filing electronically in pro se cases, service upon the pro se litigant must be by mail or personal service.

I. MISCELLANEOUS PROCEEDINGS

1.0 Miscellaneous Cases In General. All documents submitted for filing in this district in a miscellaneous proceeding after January 3, 2005, no matter when the action was originally commenced, shall be filed in accordance with the provisions governing civil cases in general.

2.0 Mandatory Exceptions. Grand Jury proceedings should be proffered for filing by the United States Attorney in paper format. These documents will be scanned into .pdf format by the Clerk's Office, and except where authorized to be publicly available, shall be kept on a secure part of the court's servers. All paper documents shall be returned to the United States Attorney.

Glossary of Terms

Attorney's Signature. Signature on electronically filed document, a combination of the attorney's login, password and a representative signature "/s/ - Attorney Name" on the signature line of the document.

CM/ECF. The Case Management / Electronic Case Files docketing and file system to be implemented by all district courts, and the Eastern District on January 3, 2005.

Consent to Service. Authorization by a party to accept service by electronic means pursuant to F.R.C.P. 5 (b)(2)(D).

Conventional Service. Service accomplished by traditional means (either personal or mailing) pursuant to F.R.C.P. 5(b)(2)(A) - (C).

Conventional Filing. Filing of a document with the Clerk of Court in paper format.

Courtesy Paper Copy. A document submitted in paper format directly to chambers when a filing exceeds 25 pages or an exhibit or attachment exceeds 50 pages. Must be labeled COURTESY COPY.

Criminal Case. All cases given a "cr" in the CM/ECF system. Generally, all felony, misdemeanor and transfer of jurisdiction of probationer actions.

Direct Electronic Filing. Filing of a document in electronic format via the internet through the ECF system.

ECF System. Electronic Case File System used by the court. Also referred to as CM/ECF. Allows for the filing and service of documents in .pdf format.

E-Filing Registration. Registering with the court to file documents electronically through ECF. Also acts as a consent to service by Electronic means. This is distinct from PACER registration.

Electronic Case Files. Official record of the case file kept by the court in electronic format.

Electronic Filing. Filing documents in .pdf format through the courts ECF system or proffered to the clerk in electronic format on dvd, cd-rom, floppy disk or other portable media.

Electronic Noticing. Using the court's ECF system for service and notice to parties of filing a document pursuant to F.R.C.P. 5(b)(2)(D).

Electronic Signature. Signature on electronically filed document, a combination of the person's login, password and representative signature, "/s/ - Name" on the signature line of the document.

ISP. Internet Service Provider. The provider of internet services for an attorney / filer.

Judge's Signature. Signature on electronically filed document, a combination of the judge's login, password, and a representative "/s/ - Name" on the signature line of the document.

Judges Order Mail Box. A separate e-mail address established by the court for the submission of proposed orders to a judge in WordPerfect format.

Magistrate Judge Cases. A case denoted as "mg" in the court's CM/ECF system. Usually a criminal complaint, petty offense or Rule 40 action.

Minor. A person under 18 years of age.

Miscellaneous Case. A case denoted as "mc" in the court's CM/ECF system. A miscellaneous number is assigned to ancillary and supplementary proceedings not defined as civil actions.

Non-Attorney's Signature. A signature on electronically filed document by other than an attorney. Example /s/ - John Doe (original signature retained by attorney).

Notice of Electronic Filing. Or NEF. A notice generated in ECF that notifies parties that a document has been filed. Contains a hyperlink to the document so recipient can have one "free" look, where they can save or print the filed document.

PACER. Public Access to Court Electronic Records. A system maintained by the Administrative Office for access to court electronic records. Registration to this system is required to access documents filed in ECF.

PACER Registration. A separate requirement for E-filing along with ECF registration. Allows users to view documents through the PACER (Public Access to Court Electronic Records) System.

PDF. Portable Document Format. The required format for documents filed through the ECF system. Documents may be converted to .pdf format through PDF software.

PDF Software. Software needed to convert word processor or scanned documents to .pdf format.

Prisoner Cases. Cases brought by a person in custody who is seeking habeas corpus

relief (28 U.S.C. §§ 2241 et seq.), or any relief authorized by 42 U.S.C. § 1981 et seq.

Privacy Policy. The Policy of the Judicial Conference of the United States on Privacy and Electronic Access to Case Files and the E-Government Act of 2002, Pub. L. No. 107-347, requiring parties (court and attorney) to omit or redact personal data identifiers from filings.

Pro Se Case. In Sacramento, all cases in which all the plaintiffs or defendants are proceeding in propria persona.

Scanned Document. A document scanned into electronic format from paper format and saved to .pdf format.

Social Security Case. Cases brought under 42 U.S.C. §§ 405(g), 1383(c)(3) and 1395ff to review a final decision of the Commissioner of Social Security.

Text Only Order. An order issued by the court without an attached electronic document. The order appears as a docket entry with the words Text Entry Only.

Word Processing Converted Document. A document created with a word processor such as Word or WordPerfect and saved to .pdf format.