

SIXTH CIRCUIT GUIDE TO ELECTRONIC FILING

Introduction

For cases filed on and after June 1, 2008, the United States Court of Appeals for the Sixth Circuit requires attorneys to file documents electronically, subject to exceptions set forth in the Sixth Circuit Rules and this Guide, using the Electronic Case Filing (ECF) system.

Comments, questions, and suggestions concerning the court's policies and procedures, as well as any other aspects of electronic filing, can be addressed to the clerk of court at ca06-clerk_court@ca6.uscourts.gov, or by mail to:

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1. Definitions

- 1.1. **ECF (Electronic Case Filing)** means the system maintained by the court for receiving and storing documents in electronic format.
- 1.2. **PACER (Public Access to Court Electronic Records)** is an electronic system that allows the user to view, print, and download electronically maintained docket information and court documents from the federal courts over the Internet.
- 1.3. **PDF (Portable Document Format)** means a non-modifiable electronic file containing the ".pdf" file extension. **Native PDF** form means a text-searchable PDF file generated from an original word-processing file.
- 1.4. **Registered Attorney** means an attorney who has registered under section 2 below and is therefore authorized to file documents electronically and to receive service on the ECF system.
- 1.5. **Initiating Filing** means the motion, petition, or other document initiating an original proceeding in this court, including those filed under Rules 5, 15 or 21 of the Federal Rules of Appellate Procedure.
- 1.6. **Document** means any order, opinion, judgment, petition, application, notice, transcript, motion, brief or other document filed in the court of appeals.
- 1.7. **Traditionally filed document** means a document submitted to the clerk in paper form for filing.
- 1.8. **NDA (Notice of Docket Activity)** is a notice generated automatically by the ECF system at the time a document is filed and a docket entry results. This notice sets forth the time of filing, the text of the docket entry, and the name of the attorney(s) required to receive notice of the filing. If a PDF document is attached to the docket entry, the NDA will also identify the person filing the document, the type of document, and a hyperlink to the filed document. Any document filed by the court will similarly list those to whom electronic notice of the filing is being sent.
- 1.9. **Record on Appeal (ROA)** includes the pleadings and other documents entered onto the docket of the district court, which are incorporated into a PDF file or files maintained on the docket of the court of appeals, except as otherwise directed by the court.

2. Registration; Passwords

- 2.1.** To participate in the ECF system, an attorney must register to file and serve documents electronically. Registration constitutes consent to receive electronic service of all documents as provided by the Federal Rules of Appellate Procedure and the Rules of the Sixth Circuit, as well as to receive electronic notice of correspondence, orders, and opinions issued by the court.
- 2.2.** To be eligible to register as a user of the ECF system, an attorney must be admitted to practice in this court, be a member in good standing, and have submitted to the PACER Service Center a completed ECF Attorney Registration form. Registration forms may be obtained from:

PACER Service Center
P.O. Box 780549
San Antonio, TX 78278
Tel. (800)676-6856 or (210)301-6440
<http://pacer.psc.uscourts.gov>

In addition, the attorney or the attorney's firm must have a PACER account and an e-mail address.

- 2.3.** Upon receipt of the attorney's registration information from the PACER Service Center, the clerk will issue a login name and user password to the attorney, who may thereafter change the password as he or she wishes. All registered attorneys have an affirmative duty to inform the clerk immediately of any change in their e-mail address. Service on an obsolete e-mail address will still constitute valid service on a registered attorney if the attorney has failed to notify the clerk of a new address. Authorized use of an attorney's login name and password by another is deemed to be the act of the attorney. If a login name and/or password should become compromised, the attorney is responsible for notifying the ECF Help Desk immediately at (513) 564-7000 or ca06-ecf-help@ca6.uscourts.gov.
- 2.4.** An attorney whose e-mail address, mailing address, telephone number, or fax number has changed from that disclosed on the attorney's original Attorney Registration Form shall file a notice of such change and serve the notice of such change on all parties in all cases in which the attorney has entered an appearance.

3. Mandatory Electronic Filing; Exceptions

- 3.1.** Except as otherwise required by the Sixth Circuit Rules or by order of the court, all documents submitted by attorneys in cases filed with the Sixth Circuit on or after June 1, 2008, shall be filed electronically, using the Electronic Case Filing (ECF) system. Electronic filings shall be governed by the Sixth Circuit Rules and by this Guide. To the extent the Sixth Circuit Rules and this Guide are inconsistent, the provisions of the Sixth Circuit Rules shall control.

- 3.2.** All electronically filed documents must be in PDF form and must conform to all technical requirements established by the Judicial Conference or the court. Whenever possible, documents must be in Native PDF form and not created by scanning. The following documents are exempted from the electronic filing requirement and are to be filed in paper format:
 - (1) Any document filed by a party that is unrepresented by counsel;
 - (2) Petitions for permission to appeal under Fed. R. App. P. 5;
 - (3) Petitions for review of an agency order under Fed. R. App. P. 15;
 - (4) Petitions for a writ of mandamus or writ of prohibition under Fed. R. App. P. 21;
 - (5) Applications for any other extraordinary writ under Fed. R. App. P. 21;
 - (6) Any other document initiating an original action in the court of appeals;
 - (7) Motions to authorize the filing in the district court of a second or successive petition for a writ of habeas corpus under 6 Cir. R. 22;
 - (8) Documents filed under seal;
 - (9) Documents relating to complaints of attorney misconduct;
 - (10) Vouchers or other documents relating to claims for compensation and reimbursement of expenses incurred with regard to representation afforded under the Criminal Justice Act; and
 - (11) Documents that exceed any limit that the court may set for the size of electronic filings

- 3.3.** No unrepresented party may file electronically; unrepresented parties must submit documents in paper format. The clerk will scan such documents into the ECF system, and the electronic version scanned in by the clerk will constitute the appeal record of the court as reflected on its docket.

4. Voluntary Electronic Filing

A registered attorney may voluntarily elect to submit any or all documents electronically, except those documents listed in paragraph 3.2 above, in appeals opened prior to June 1, 2008, whether filings in the district court had been made electronically or in paper.

5. Record on Appeal and Appendices

- 5.1.** The Record on Appeal (ROA) will be compiled as set forth in 6 Cir. R. 10. In any appeal in which the entire record of the lower court or administrative agency is available to this court in electronic form, no paper record on appeal will be transmitted to the clerk. If part of the record below is maintained in paper form, only that part must be transmitted to the clerk.
- 5.2.** Except as provided in 6 Cir. R. 30 or as otherwise directed by the court, appendices to briefs are no longer required in appeals filed on and after June 1, 2008. Appendices to briefs in such appeals will not be accepted by the clerk for filing.

6. Briefs on Appeal - Proof Briefs Eliminated

- 6.1.** Proof briefs are no longer required to be filed. The clerk shall not accept any proof brief for filing.
- 6.2.** Only one version of each brief is to be filed. Each brief will cite with specificity those parts of the record to which reference is made. Citation shall be to both the record on appeal (ROA), which is included as a PDF file on the court of appeals' docket, and to the particular record item being referred to.
- 6.3.** The ROA is comprised of the pleadings and other filings on the district court docket, each of which maintains its original internal page numbers. The entire ROA file is also serially paginated. Transcript prepared for appeal is also included in the ROA or as a supplement thereto. Record references should be made in the following manner:

"Motion of appellant for summary judgment, Record Entry No. 21, pp. 2-3; ROA pp. 82-83"

or

"Trial testimony of plaintiff, Record Entry No. 53, p.1; ROA p. 139"

7. Documents Filed Under Seal

- 7.1.** A motion to file documents under seal may be filed electronically unless prohibited by law, local rule, or court order. If the court grants the motion, the order authorizing the filing of documents under seal may be filed electronically unless prohibited by law. Documents ordered placed under seal must be filed in paper format in a sealed envelope. The face of the envelope containing such documents shall contain a conspicuous notation that it contains "DOCUMENTS UNDER SEAL," or substantially similar language, and shall have attached to it a paper copy of the order authorizing the filing of the documents under seal.
- 7.2.** Documents filed under seal in the court from which an appeal is taken shall continue to be filed under seal on appeal to this court. Documents filed under seal shall be filed in paper format and shall comply with all filing requirements of the court that originally ordered or otherwise authorized the documents to be filed under seal.

8. Signatures

- 8.1.** Attorneys - A registered attorney's use of the assigned login name and password to submit a document electronically serves as that attorney's signature on that document for all purposes. The identity of the registered attorney submitting the electronically filed document must be reflected at the end of the document by means of an "s/[attorney's name]" block showing the attorney's name, followed by the attorney's business address, telephone number, and e-mail address. Graphic and other electronic signatures are discouraged.
- 8.2.** Multiple attorney signatures - The filer of any electronically filed document requiring multiple signatures (e.g., stipulations) must list thereon all the names of other attorney signatories by means of an "s/ [attorney's name]" block for each. By submitting such a document, the filer certifies that each of the other attorneys has expressly agreed to the form and substance of the document, and that the filer has their authority to submit the document electronically. In the alternative, the filer *may* submit a scanned document containing all necessary signatures.
- 8.3.** Clerk of Court or Deputy Clerks - The electronic filing of any document by the clerk or a deputy clerk of this court by use of that individual's login and password shall be deemed the filing of a signed original document for all purposes.

9. Entry onto the Docket; Official Court Record

- 9.1.** The electronic transmission of a document, together with transmission of the NDA from the court, in accordance with the policies, procedures, and rules adopted by the court, constitutes the filing of the document under the Federal Rules of Appellate Procedure and constitutes the entry of that document onto the official docket of the court maintained by the clerk pursuant to Fed. R. App. P. 45(b)(1). All orders, decrees, notices, opinions and judgments of the court will be filed and maintained by the ECF system and constitute entry on the docket kept by the clerk for purposes of Rules 36 and 45(b)(1) and (c) of the Federal Rules of Appellate Procedure.
- 9.2.** The electronic version of filed documents, whether filed electronically in the first instance or received by the clerk in paper format and subsequently scanned into electronic format, constitutes the official record in the case. Later modification of a filed document or docket entry is not permitted except as authorized by the court. A document submitted electronically is deemed to have been filed on the date and at the time indicated in the system-generated NDA.
- 9.3.** The clerk's office will discard all paper documents once they have been scanned and made a part of the official record, unless the electronic file thereby produced is incomplete or of questionable quality.

10. Service of Documents

- 10.1.** A certificate of service is required for all documents, and registered attorneys must comply with Fed. R. App. P. 25 when filing electronically. The ECF system will automatically generate and send by e-mail an NDA to all registered attorneys participating in any case. This notice constitutes service on those registered attorneys. Registration for electronic filing by the ECF system constitutes consent to service through the NDA. Independent service, either by paper or otherwise, need not be made on any registered attorney. *Pro se* litigants and attorneys who are not registered for electronic filing must be served by the filing party through the conventional means of service set forth in Fed. R. App. P. 25. The Notice of Docket Activity generated by the ECF system does not replace the certificate of service required by FRAP 25.
- 10.2.** Except as may be otherwise provided by local rule or order of the court, all orders, opinions, judgments and other court-issued documents in cases maintained in the ECF system will be filed electronically, which filing will constitute entry on the docket maintained by the clerk under FRAP 36 and 45(b).

Any order, opinion, judgment, or other court-issued document filed electronically without the signature of the judge, clerk, or authorized deputy clerk has the same effect as if the judge or clerk had signed a paper copy of the filing.

11. Access to Documents

- 11.1.** Access to all documents maintained electronically, except those filed under seal, is available to any person through the PACER system. PACER accounts can be established through the PACER Service Center at: <http://pacer.psc.uscourts.gov>, or by contacting the PACER Service Center, P.O. Box 780549, San Antonio, Texas 78278, or by telephone at (800) 676-6856 or (210) 301-6440.
- 11.2.** Under the PACER system, parties and counsel of record are entitled to one free copy of each document filed in their cases, within fifteen days of filing. Parties are encouraged to download a copy of the document and save it to their hard drives during this period, as subsequent access to those documents is subject to billing fees as set forth on the PACER website.

12. Privacy Protection and Redactions

In accordance with Fed. R. App. P. 25(a)(5), registered attorneys must redact all documents, including briefs, consistent with the privacy policy of the Judicial Conference of the United States. Required redactions include social security numbers and taxpayer identification numbers (the filer shall include only the last four digits of a social security or tax identification number), birth dates (use year of birth only), minors' names (initials may be used), and financial account numbers (except those identifying property allegedly subject to forfeiture in a forfeiture proceeding). It is the responsibility of the filer to redact pleadings appropriately. Pursuant to the privacy policy of the Judicial Conference and applicable statutory provisions, remote electronic access to immigration and social security dockets is limited to the attorneys in the case who are registered in ECF. In this regard, the clerk will restrict electronic public access in these cases to judges, court staff, and the parties and attorneys in the appeal or agency proceeding. The court will not restrict access to orders and opinions in these cases. Parties seeking to restrict access to orders and opinions must file a motion explaining why that relief is required in a given case.

13. Filing Deadlines; Technical Failures

- 13.1.** Filing documents electronically does not in any way alter any filing deadlines. Where a specific time of day deadline is set by court order or stipulation, the electronic filing must be completed by that time. An electronically filed document is deemed filed upon completion of the transmission and issuance by the court's system of an NDA.
- 13.2.** The clerk shall deem the court's website 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 12:00 noon (Eastern time)

that day, in which case, filings due that day which were not filed due solely to such technical failures shall become due the next business day. Such delayed filings must be accompanied by a declaration or affidavit attesting to the filer's failed attempts to file electronically at least two times after 12:00 noon separated by at least one hour on each day of delay because of such technical failure. The initial point of contact for any practitioner experiencing difficulty filing a document electronically shall be the ECF Help Desk, available by phone at (513) 564-7000 during the hours 8:00 A.M. to 5:00 P.M. Eastern time, or by e-mail at ca06-ecf-help@ca6.uscourts.gov.

14. Training

- 14.1.** The clerk shall post and maintain on the court's website instructions for counsel on how to use the ECF system, and shall update the website as necessary when changes are made to the procedures for using ECF. These instructions, in such form as the clerk determines most effective, shall be clear and concise, giving the prospective user the information necessary to successfully file documents.
- 14.2.** The court shall also staff and maintain an ECF Help Desk to which users can turn for direction in accessing the ECF system successfully. In addition, the clerk shall offer whatever other assistance is practicable to ensure that attorneys become proficient in the use of the ECF system.