

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

OFFICE OF SPECIAL MASTERS' GENERAL ORDER # 13¹

PROCEDURE FOR ELECTRONIC CASE FILING IN VACCINE ACT CASES

A. Introduction

In recent years this court has implemented an Electronic Case Filing (“ECF”) system for electronic case management and docketing.² During the past two years, many *newly filed* Vaccine Act cases have been immediately placed at the time of filing into the ECF system, and also many *pending* cases have been converted from the traditional “paper case” format to the ECF system. ***The Office of Special Masters strongly encourages all attorneys, when filing any new Vaccine Act petitions, to designate such cases at the time of filing for inclusion in the ECF system, and to convert their pending “paper cases” to the ECF format.***³ At this time, however, use of the ECF system is *not* mandatory.

The *general procedures* for use of the ECF system are set forth in Appendix E of this court’s Rules (issued November 15, 2007), entitled “Electronic Case Filing Procedure,” which can be found on the court’s website at www.uscfc.uscourts.gov under “Rules.” A User’s Manual for the ECF system is also available on the court’s website under “Electronic Filing.” ***However, it is crucial to understand that several provisions of that Appendix E are substantially modified for Vaccine Act cases***, as will be set forth below. This General Order modifies several of the provisions set forth in Appendix E for use of the ECF system in Vaccine Act cases. As to procedures not discussed in this General Order, the procedures set forth in Appendix E apply.

B. Filing new petitions using the ECF system or converting pending petitions to the ECF format

¹This General Order replaces and supersedes Office of Special Masters’ General Order #12, and also supersedes the Amendment to General Order #12 issued on January 27, 2006.

²The system is also described as the Case Management/Electronic Case Filing (“CM/ECF”) system. This order will use the shorter term “ECF.”

³To use the ECF system an attorney must first establish an ECF account with the clerk’s office. To establish such an account, an attorney should follow the instructions on the court’s website under “Electronic Filing.”

1. Filing a new petition to immediately become an ECF case

If an attorney seeks to file a *new petition* and to make the case an ECF case from the start, the procedure is as follows. The petitioner must file (and serve) a “petition”--that is, a “short and plain statement of the grounds for an award of compensation”--in *paper* form. No medical records or additional documents need be filed along with the petition at that time. The petition shall clearly indicate the petitioner’s desire to have the case designated for ECF, and shall also state that the attorney filing the petition has a valid ECF account with this court. After receiving such a paper petition, the clerk’s office will promptly notify the attorney of the docket number that is assigned to the case. The records and affidavits pertaining to the petition, as set forth in Vaccine Rule 2(a), shall *then* be promptly filed electronically (but see section (C)(4) of this General Order below, discussing the alternative method of filing voluminous medical records via CD-ROM). All further filings in the case thereafter will be made electronically.

2. Converting a pending “paper case” to the ECF format

In pending cases which are not already ECF cases, counsel may *seek leave of the special master* to file all subsequent documents electronically. The special master will ordinarily promptly grant such leave, and the clerk of court will convert the case to the ECF format, so that all future filings in the case can be made via the ECF system.

C. Procedures in Vaccine Act cases that are different from procedures in non-Vaccine Act cases

1. Privacy provisions

The “Privacy Provisions” set forth in Part VIII of Appendix E *do not* apply in Vaccine Act cases. This is because the privacy requirements specified in the Vaccine Act (see 42 U.S.C. § 300aa-12(d)(4)(A)) render the provisions of Part VIII unnecessary. Instead, the following privacy provisions will apply in *Vaccine Act* cases that become part of the ECF system.

a. Access to electronic files

Documents electronically filed in Vaccine Act cases will *not* be accessible electronically by ordinary users of the ECF system. This means that the *only* persons who will be able to access the electronically-filed documents in a Vaccine Act case, other than court personnel, will be the *counsel of record* in the case. (The *docket sheet* of a Vaccine Act case, however--not the filed documents--*is* publically available.)

b. No need to delete personal identifiers from documents

Contrary to the procedure set forth at paragraph 26 of Appendix E, parties *need not* and *should not* delete personal identifiers from documents filed in Vaccine Act cases. This is because the *entire documents* are already protected from public view. Therefore, documents

containing personal identifiers, such as medical records, shall *not* be redacted, but should be filed in their original form. Similarly, contrary to the procedure set forth at paragraph 8(c)(ii) of Appendix E, parties in Vaccine Act cases should, in general, not file “excerpts” from documents, but instead file the *entire* documents. Later, probably at the time of an evidentiary hearing in the case, the parties can utilize a memorandum or brief, if appropriate, in order to direct the special master’s attention to the most relevant portions of each document.

2. Organization of documents

With respect to medical records to be filed in ECF cases, Appendix E notes (paragraph 9(a)) that a single filing may be broken into several Adobe Portable Document Format (“PDF”) files. In order to standardize the ECF process for Vaccine Act cases, when filing multiple records, each PDF file should be separated and labeled in the following manner. First, each PDF filed should be **separated** and **labeled** according to the source or subject matter of the records, including the institution or physician providing the records. Second, each PDF file should be labeled as a consecutively numbered or lettered exhibit, and should contain a brief written description of the records contained therein. For example, the first Adobe PDF file might contain prenatal records and be labeled: “Petitioner’s Exhibit 1--Prenatal Records, Dr. Smith;” the second PDF file, containing birth records, would read: “Petitioner’s Exhibit 2--Birth Records, Smalltown Hospital;” the third and fourth PDF files, containing pediatric records of different physicians, would read: “Petitioner’s Exhibit 3--Pediatric Records, Dr. John;” “Petitioner’s Exhibit 4 --Pediatric Records, Dr. Jack.”

3. Paper copies

Please note that, contrary to Appendix E (paragraph 9), unless otherwise specified, parties in Vaccine Act cases **will not be required** to file paper courtesy copies of electronic documents, even if such documents exceed 50 pages when printed.

4. Filing via CD-ROM in the case of extremely large filings

In the early days of the ECF system, in some Vaccine Act cases it was noted that the system’s technical requirements made it difficult to upload the voluminous medical records typical of Vaccine Act cases. Accordingly, an exception to the standard ECF filing requirements has been made for those very large files that make uploading impractical--such documents may be filed via CD-ROM, as set forth below. **However, it should be noted that the capacity of the ECF system to accept large filings electronically has recently been significantly increased. Therefore, the Office of Special Masters strongly urges that parties file documents electronically whenever possible, using CD-ROMS *only* in the rare cases of extremely large files, as specified below.**

a. Size of filings allowed to be filed by CD-ROM

At this time, the ECF system can accept PDF files of up to 4 megabytes, and at least 10 such files can be uploaded per filing. Therefore, parties should utilize CD-ROMS only for filings containing **over forty (40) megabytes** of scanned material (approximately 600-800 pages at 300 dots per inch (“dpi”)).

b. Pagination

Each exhibit of more than one page shall be paginated (hand-printed pagination is sufficient), and pagination of each exhibit shall be independent.

c. CD-ROM format

Unless a party obtains special permission from the special master, the only type of optical disc to be filed shall be a disc in CD-ROM format. The party filing the disc shall (1) “close” or finalize the disc so that additional material cannot be written into it; and (2) scan the disc using appropriate anti-virus software *after* its creation and closure.

d. Labeling

The disc and the disc’s container shall each be appropriately labeled with: 1) the case caption; 2) the date of filing; and 3) the range of exhibits the disc contains, e.g., Exhibits 01-20. The disc shall be contained in a paper, plastic, or waxed paper envelope.

e. Format of files

Graphics and handwriting shall be scanned using a resolution of **not less than 300 dots per inch**. All files shall be saved in Adobe 5.0 PDF. No password protection for opening the files may be used. However, password protection for modifying the files may be used.

f. Organization of files on disc

Files shall be clearly named to allow someone viewing a directory of the disc to discern its contents. File names shall begin with the letters “Ex” followed by the exhibit letter or number. Exhibit numbers shall be two digits--e.g., 01, 02, ... 09, 10, 11. A brief description of the content of the exhibit and the docket number, expressed in six digit format, shall follow. Spaces shall be represented by an underscore. All files shall have “.pdf” as their file extension. The following is an example of the appropriate file format:

Ex03_University_Hospital_98-0000.pdf

In all other respects, the organization and designation of exhibits shall be as set forth in the Vaccine Rules and the *Guidelines for Practice under the National Vaccine Injury Compensation Program*, which can be found at www.uscfc.uscourts.gov/OSMPage.htm.

g. Filing and service

Filing of exhibits on disc shall be accomplished by: 1) creating an appropriate entry in the ECF system; 2) delivering two discs to the clerk's office; and 3) serving upon opposing counsel one copy of the disc containing the exhibits. **(Note that the Notice of Filing alone does not constitute compliance with any special master's order to file documents by a specific date; the CD itself must arrive by the due date.)** An appropriate entry shall consist of a "Notice of Filing of CD." This Notice of Filing shall contain: 1) an index of exhibits on the CD; 2) a statement certifying that the contents of the disc have been scanned using anti-virus software with up-to-date, anti-virus definitions; and 3) a certificate of service stating when the disc was mailed. It is the party's duty to ensure that the disc is received at the clerk's office ***no later than five (5) days after the Notice of Filing is electronically docketed. If the disc is not received within the five-day period, the assigned special master may enter an order striking the Notice of Filing from the docket.*** A printed copy of the Notice of Filing shall accompany the disc.

Date: January 2, 2008



Gary J. Golkiewicz
Chief Special Master