

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

Misc. No. 08-08

IN RE: ADOPTION OF CASE MANAGEMENT/ELECTRONIC CASE FILING SYSTEM (CM/ECF)
AND INTERIM E-RULES FOR CM/ECF FILINGS

Before GREENE, *Chief Judge*, and KASOLD, HAGEL, MOORMAN,
LANCE, DAVIS, and SCHOELEN, *Judges*.

ORDER

Effective October 14, 2008, the United States Court of Appeals for Veterans Claims (Court) adopts the Case Management/Electronic Case Filing system (CM/ECF), and hereby adopts Interim E-Rules (Attachment A) to govern the electronic filing of documents in cases before the Court. Use of the Court's electronic filing system is mandatory for all represented parties unless granted an exception. Updated computer-based training modules for CM/ECF will soon be available on the Court's website at www.vetapp.gov. Self-represented parties may not file electronically without first obtaining Court approval.

The Court has benefitted from comments and recommendations from its Rules Advisory Committee and from the public and expresses its appreciation. The Interim E-Rules may be amended from time to time, with or without prior notice, by further order of the Court. The Court may deviate from these Interim E-Rules in specific cases as deemed appropriate. CM/ECF Filing Users must comply with the Interim E-Rules as well as the Court's Rules of Practice and Procedure; however, the Interim E-Rules will control if there is a conflict between rules.

Accordingly, it is

ORDERED that CM/ECF shall apply to all filings, as described in the Interim E-Rules, filed at the Court on or after October 14, 2008. It is further

ORDERED that the Court's Interim E-Rules are hereby published.

DATED: October 3, 2008

BY THE COURT:

/s/ William P. Greene, Jr.

WILLIAM P. GREENE, JR.
Chief Judge

Attachment

ATTACHMENT 'A' TO MISCELLANEOUS ORDER NO. 08-08

Case Management/Electronic Case Filing System (CM/ECF)

Interim E-Rules

The following Interim E-Rules govern the electronic filing of documents in cases before the United States Court of Appeals for Veterans Claims (the Court). These Interim E-Rules may be amended from time to time, with or without prior notice, by further order of the Court. The Court may deviate from these Interim E-Rules in specific cases as deemed appropriate.

Interim E-Rule 1 - Definitions

(a) For the purposes of these Interim E-Rules:

(1) The term "CM/ECF" means Case Management/Electronic Case Filing. CM/ECF is an automated system for case management. The CM/ECF system enables users to file cases and documents electronically.

(2) The term "electronic signature" refers to an electronic symbol attached to or associated with an electronic document and executed or adopted with the intent to sign the document. The electronic signature shall be positioned on a document in the place where a signature would normally appear. To indicate the authority of the signatory, the electronic signature will typically be followed by the typed name and title of the signatory. The following is an example of how a document with an electronic signature will generally appear:

Submitted,

/s/ John S. Doe

John S. Doe, Attorney

(3) The term "Filing User" means a registered CM/ECF participant (party or representative).

(4) The term "locked" means that an electronic file will be inaccessible to the public, and only accessible to Filing Users in a particular case.

(5) The term "log-in" means the password and username issued to each CM/ECF Filing User.

(6) The term "Notice of Docket Activity" means an electronic notification generated by the CM/ECF system that is transmitted by email to all parties and representatives for that case. This Notice of Docket Activity constitutes "notice" and "service" to all Filing Users who have registered for electronic filing participation in a particular case.

(7) The term "official record" means the electronic version of a document that is stored by the Court within the CM/ECF system, which is time and date-stamped by CM/ECF when filed.

(8) The term "password" means a sequence of characters and letters used to verify the authenticity of a Filing User's log-in.

(9) The term "PDF" means portable document format. PDF is a universal electronic file format designed to allow documents to be viewed, navigated, and printed from any computer.

(10) The term "personal identifier" means a Social Security number, date of birth, financial account number, or name of a minor child. It is each Filing User's responsibility to redact personal identifiers from any documents filed electronically that are not designated as locked documents.

(11) The term "pro bono limited appearance" refers to participation by a pro bono representation program for purposes of filing a motion for stay of proceedings, pursuant to Rule 5 of the Court's Rules of Practice and Procedure. U.S. VET. APP. R. 5.

(12) The term "single consolidated document" means the electronic conversion of multiple documents into one word processing document that will become the single PDF document.

Interim E-Rule 2 – Scope of Electronic Filing

(a) Except as otherwise prescribed, all cases filed in the Court are assigned to the CM/ECF system. Administrative matters, including attorney disciplinary actions and judicial complaints, are not assigned to CM/ECF.

(b) Self-represented litigants may only file documents electronically if they are approved as Filing Users. *See* Interim E-Rule 3(b).

(c) Except for documents initiating cases in the Court (such as a Notice of Appeal or Petition for Extraordinary Relief), all submissions filed by a representative must be filed electronically using

CM/ECF. For documents initiating a case, in addition to conventional methods of filing, *see* U.S. VET. APP. R. 3, 25, such documents may also be filed by electronically attaching the document to an email sent to esubmission@vetapp.gov.

(d) If a document is filed electronically, paper copies are not to be filed. The Court may request paper copies of electronically filed documents as needed, and the Filing User must promptly file the requested copies.

(e) Upon motion and a showing of good cause, the Court may exempt a representative from these provisions and authorize filing by means other than use of CM/ECF.

(f) All electronic documents must be filed in PDF.

Interim E-Rule 3 – Eligibility, Registration, Passwords

(a) All representatives before the Court must register as CM/ECF Filing Users by reviewing the information supplied on the Court's Web site (www.vetapp.gov) and completing the appropriate registration form.

(b) A self-represented party may file a motion seeking leave to register as a CM/ECF Filing User solely for purposes of that case. Only upon Court approval may a self-represented party file documents electronically. A self-represented party's Filing User status will cease upon termination of the case or termination of the party's self-represented status.

(c) A pro bono limited appearance will have Filing User status commencing at the time a motion for a stay of proceedings for the purpose of conducting case evaluation is filed. *See* U.S. VET. APP. R. 5. Such Filing User status will cease when any stay granted is lifted.

(d) Completion of the Court's CM/ECF Filer Registration constitutes consent to electronic service of all documents as provided in these Interim E-Rules and Misc. Order 19-07.

(e) Filing Users agree to protect the security of their passwords and immediately notify the CM/ECF Help Desk (202-418-3453) if they learn that their password has been compromised. Filing Users may be sanctioned for failure to comply with this provision.

(f) A Filing User who does not have any open cases with the Court and who desires to become inactive may withdraw from participation in CM/ECF. Withdrawal is accomplished by providing the Clerk with written notice (to efiling@vetapp.gov) of the intent to withdraw. *See also* Interim E-Rule 2(e).

Interim E-Rule 4 – Locked Documents, Redaction

- (a) All Filing Users must strive to protect personal identifiers. In order to allow electronic access to documents, but also to protect personal privacy and other legitimate interests, certain documents in a case will be accessible to the public using CM/ECF, and certain documents will be locked, and available only to Filing Users in that case.
- (b) Once a Notice of Appeal is received by the Court, the Clerk will docket the appeal, designate the Secretary as the appellee, and create an electronic record of the Notice of Appeal. *See* U.S. VET. APP. R. 4(b). Because the Notice of Appeal will likely contain personal identifiers, that electronic record will be locked and accessible through CM/ECF only to Filing Users in that case.
- (c) Once a Petition for Extraordinary Relief is received by the Court, the Clerk will docket the petition, designate the Secretary as the Respondent, and create an electronic record of the petition. *See* U.S. VET. APP. R. 21(a). Because the Petition will likely contain personal identifiers, that electronic record will be locked and accessible through CM/ECF only to Filing Users in that case.
- (d) When the Secretary files the Board of Veterans' Appeals decision in a particular case, *see* U.S. VET. APP. R. 4(c), the Secretary must file at least two separate documents under separate docket entries: (1) a reference transmittal identifying the Board decision with any necessary personal identifiers; and (2) the Board decision with any personal identifiers redacted.
- (e) The Record of Proceedings that the Secretary must file pursuant to Rule 28.1 of the Court's Rules of Practice and Procedure will be locked and available only to Filing Users in that case. *See* U.S. VET. APP. R. 28.1.

Interim E-Rule 5 – Effects of Electronic Filing

- (a) Electronic filing of a document with the Court consistent with these Interim E-Rules, and the transmission of a Notice of Docket Activity from the Court, constitutes filing of the document under Rule 4 of the Court's Rules of Practice and Procedure. U.S. VET. APP. R. 4.
- (b) The Court will not accept for electronic filing any document that is not legible, complete, and in PDF format. When a document has been filed electronically, the official record is the electronic document stored by the Court, and the Filing User is bound by the official record.
- (c) A document filed electronically is deemed filed at the time and date stated on the Notice of Docket Activity generated by CM/ECF. To be timely filed on a specific date, electronic filing must be completed before midnight Eastern Time, as shown on the Notice of Docket Activity.

(d) If a CM/ECF-submitted electronic document is not timely filed because of a power failure or other emergency circumstance, a Filing User must notify the Court in a timely manner, explain the reasons for such circumstance, and seek appropriate relief.

(e) A Filing User who is adversely affected by a technical failure at the Court in connection with filing or receipt of an electronic document may seek appropriate relief from the Court.

Interim E-Rule 6 – Service of Electronic Documents

(a) The Court's electronically-generated Notice of Docket Activity constitutes service of the filed document on all Filing Users in that case. Parties who are not registered Filing Users or CM/ECF-exempt representatives must be served conventionally (in accordance with Rule 25(c), (d), and (e) of the Court's Rules of Practice and Procedure) with a copy of any document filed electronically. U.S. VET. APP. R. 25.

(b) The Secretary is always considered a Filing User. The Secretary shall provide to the Court a general email address where Notices of Docketing Activity may be sent in any case prior to the entry of an appearance of a specific attorney.

Interim E-Rule 7 – Attachments and Exhibits

Unless the Court permits or requires traditional paper filing, Filing Users must submit all documents such as exhibits or attachments as a single consolidated document in electronic PDF format. If a Filing User submits a PDF document consisting of more than one attachment or exhibit, then the first page of the consolidated PDF should be a table of contents corresponding to the pagination of the PDF file.

Interim E-Rule 8 – Sealed Documents

Filing Users must file sealed material or motions to seal using CM/ECF and a specific docket entry (SEALED DOCUMENT FILED). Sealed material must also be filed in accordance with Rules 10(d)(2) and 48 of the Court's Rules of Practice and Procedure, which require filing the material with a motion to seal. If the motion is granted, electronic access to the sealed material will be automatically limited to the Court and Filing Users in that case. *See* U.S. VET. APP. R. 10, 48.

Interim E-Rule 9 – Retention Requirements

(a) Documents that are electronically filed and require an original signature of a person other than the Filing User must be maintained in paper form by the Filing User for a period of one year after issuance of the Court's final mandate in the case. *See* U.S. VET. APP. R. 37(b).

(b) On request of the Court, the Filing User must provide original documents for review. *See* Interim E-Rule 2(d).

Interim E-Rule 10 – Electronic Signatures

(a) Where a signature is required, the typed underlined name of the Filing User, under whose log-in and password the document is submitted, must be preceded by an "/s/" and typed in the space where the signature would otherwise appear. *See* Interim E-Rule 1(a)(2).

(b) CM/ECF Filing Users are responsible for protecting the security and integrity of a Filing User's log-in and password. No person may knowingly permit or cause to permit a Filing User's log-in and password to be used by anyone other than an authorized agent of the Filing User. *See* Interim E-Rule 3(e).

(c) Electronically represented signatures as described above are considered valid signatures. If any Filing User objects to the representation of his or her signature on an electronic document as described above, he or she must, within 10 calendar days of its filing, file a notice setting forth the basis of the objection.

Interim E-Rule 11 – Notice and Entry of Court-Issued Documents

(a) Upon issuance of a notice, order, memorandum decision, opinion, entry of judgment, or mandate in a case assigned to CM/ECF, a Notice of Docket Activity is automatically generated and transmitted to Filing Users in the case. Electronic transmission of the Notice of Docket Activity constitutes the notice and service required by Rules 36(b) and 45(c) of the Court's Rules of Practice and Procedure. U.S. VET. APP. R. 36, 45.

(b) The Clerk will send a copy in paper form of any Court-issued documents to a party who is not a CM/ECF Filing User. *See* U.S. VET. APP. R. 45(c).

(c) Except as otherwise provided by the Court's Rules of Practice and Procedure or a Court order, all actions of the Court relating to cases filed and maintained in the CM/ECF system will be filed electronically in accordance with these Interim E-Rules, which will constitute entry on the docket maintained by the Clerk under Rule 45(b) of the Court's Rules of Practice and Procedure. U.S. VET. APP. R. 45.

(d) A judicial order or other Court-issued document filed electronically without the original signature of a judge or authorized Court personnel, but that includes an electronic signature, has the same force and effect as if the judge or authorized Court personnel had signed a paper copy of the order.

Interim E-Rule 12 – Technology and Compatibility

(a) All CM/ECF Filing Users must create and maintain an electronic filing system compatible with the Court's CM/ECF system. The failure to create and maintain an electronic filing system compatible with the Court's electronic filing system will not be accepted as a reason for the failure to timely file any electronic document. The Court's electronic filing system may be periodically modified or upgraded, and all Filing Users must modify or upgrade their electronic filing system to maintain compatibility. Every effort will be made by the Court to provide advance notice of system modifications or upgrades that may impact Filing Users.

Interim E-Rule 13 – Public Access

(a) Except for the cases sealed under Rule 48 of the Court's Rules of Practice and Procedure, documents filed electronically are public documents and once filed are not protected by federal privacy statutes or regulations. Documents filed electronically are automatically linked to automated docket entries without prior review by personnel of the Court. Because of the worldwide access to these electronic records, this fact should be carefully considered by all Filing Users when filing documents using the CM/ECF. *See* U.S. VET. APP. R. 48.

(b) It is the responsibility of all Filing Users to refrain from and prevent the filing with the Court of any electronic document, that will not be locked, that contains personal identifiers or information such as medical information otherwise protected by privacy statutes or regulations or that is deemed personal in nature and not necessary for the resolution of the matters under consideration by the Court. Redaction of private information not necessary for the resolution of the matters before the Court from documents filed electronically is permitted. Parties wishing to challenge such redactions may do so by filing a motion with the Court within 15 days of the document's filing. *See* U.S. VET. APP. R. 6.