

**United States Court of Appeals
for the Ninth Circuit**

**Administrative Order Regarding Electronic Filing in
All Ninth Circuit Cases
(11/10/08)**

The United States Court of Appeals for the Ninth Circuit adopts the following interim provisions to govern the filing of documents in cases before the Court. These provisions may be amended from time to time, with or without prior notice, by further order of the Court. The Court may deviate from these procedures in specific cases if deemed appropriate in the exercise of its discretion.

Questions concerning the appellate CM/ECF system should be directed to the Court by email at CMECF_ca9help@ca9.uscourts.gov, or by telephone at 415-355-8000. See the Court's website for answers to Frequently Asked Questions about the appellate CM/ECF system: <http://www.ca9.uscourts.gov>.

Rule 1 - Effective Dates

- (a) On September 2, 2008, the Court began to allow parties to file certain documents using the Court's Case Management/ Electronic Case Files (CM/ECF) system.
- (b) Until January 1, 2009, use of the appellate CM/ECF system is voluntary.
- (c) Effective January 2, 2009, use of the appellate CM/ECF system will be mandatory for all attorneys and all court reporters unless they are granted an exemption. Use of the appellate CM/ECF system is voluntary for all parties proceeding without counsel.

Rule 2 - Registration and Training

- (a) Registration is required to obtain a login and password for use of the appellate CM/ECF system.

- (b) Attorneys, court reporters, and pro se parties may register at:
http://pacer.psc.uscourts.gov/announcements/general/ea_filer.html
- (c) Registration is required specifically for the Ninth Circuit, and this registration is separate from registration for PACER, ECF in other courts, or from registration for electronic noticing in the Ninth Circuit. However, during registration for the Ninth Circuit, a registrant may choose the same user login and password used for other Circuits via the centralized Appellate ECF registration hosted on the PACER Service Center website.
- (d) Computer-based training modules explaining CM/ECF, PACER reports, and document filing in the Ninth Circuit are available on the Court's website. The Court strongly encourages all filers to review these training materials.

Rule 3 - Exemptions

- (a) Except for parties proceeding without counsel, a filer who wishes to be exempt from using the appellate CM/ECF system must fill out and submit the CM/ECF Exemption Form. The Form is available from the Clerk's office and at the end of this order, or may be downloaded from the "CM/ECF" section of the Court's website.
- (b) The Clerk will grant exemptions only for good cause.
- (c) An exemption will apply to all pending and future cases in this Court. If, in the future, a filer wishes to participate in the appellate CM/ECF system, the filer should register for ECF (*see* Rule 2 for Registration and Training), and the exemption will no longer apply.

Rule 4 - Documents Which *Cannot* Be Filed Electronically

- (a) The documents listed below cannot be filed electronically and must always be submitted in paper form. Note that some of these require submission of electronic copies on CD or DVD, as described below.
 - ▶ Case Opening Materials;
 - ▶ Excerpts of Record;
 - ▶ Sealed Documents & Motions for Permission to File a

Document Under Seal;

- ▶ Criminal Justice Act (CJA) Vouchers;
- ▶ Any motion filed **before** a Ninth Circuit case number is assigned.

- (1) **Case opening materials.** Documents that start a case in this Court must be filed in paper format and must be accompanied by an electronic (PDF) version (created pursuant to Rule 10(c)) of the document on either CD or DVD. Examples of case opening materials include:
 - ▶ Petition for Permission to Appeal (Fed. R. App. P. 5; 9th Cir. R. 5-2);
 - ▶ Petition for Review of an Agency Order or Application to Enforce an Agency Order (Fed. R. App. P. 15; 9th Cir. R. 15-3, 15-4; Form 3);
 - ▶ Petition for Writ of Mandamus & Prohibition (Fed. R. App. P. 21; 9th Cir. R. 21-2, 21-3);
 - ▶ Application for Leave to File Second or Successive Petition Under 28 U.S.C. § 2254 or Motion Under 28 U.S.C. § 2255 (9th Cir. R. 22-3; Form 12).
- (2) **Excerpts of Record.** 4 sets of Excerpts of Record, appendices, and other record materials must be served in paper format when you submit a brief for filing. (*see* Rule 6 for Procedure for Briefs).
- (3) **Sealed Documents & Motions for Permission to File a Document Under Seal.** Sealed documents must be filed in paper format and must be accompanied by an electronic (PDF) version (created pursuant to Rule 10(c)) of the document on either CD or DVD. This includes motions for permission to file a document under seal. The motion should state whether the filing party believes the motion to seal itself may be made available to the public or should remain sealed.
- (4) **Criminal Justice Act (CJA) documents.** CJA vouchers and attachments must be filed in paper format. This includes the CJA Information Summary Form.

- (5) **Motions filed before the assignment of a Ninth Circuit Case Number.** Any motion filed before a Ninth Circuit case number has been assigned must be filed in paper format and must be accompanied by an electronic (PDF) version (created pursuant to Rule 10(c)) of the document on either CD or DVD. For example, if you file a case opening document listed in section (1) above and wish to file a motion on the same day, you must file the motion in paper format along with the case opening document, accompanied by a CD or DVD containing a PDF version of the case opening document and the motion.

Rule 5 - Effective January 2, 2009, All Documents Not Listed in Rule 4 Must Be Filed Electronically Absent Exemption

- (a) Documents not specifically listed in Rule 4 above **must** be filed electronically, unless the filer has a CM/ECF exemption or is a party proceeding without counsel.
- (b) Emergency motions which are filed electronically must also comply with 9th Circuit Rule 27-3(a), i.e., the filer must contact the motions unit at 415-355-8020 prior to filing the motion.
- (c) An electronic filer may file documents only in cases where he or she is a party, counsel of record, or court reporter, or where the filer seeks leave to participate as an intervenor or as an amicus.
- (d) Except as provided in Rule 6, or by an order of the Court, an electronic filer **may not** submit to the Court (by U.S. Mail, overnight mail, or fax) paper copies of any documents filed electronically through the appellate CM/ECF system.

Rule 6 - Procedure for Briefs

- (a) Parties must submit a brief electronically by the due date. At that time, parties shall serve other parties in compliance with Rule 8 of this order. The Court will review the brief for deficiencies.
- (b) By the due date, in conjunction with this electronic brief submission, the

filer shall serve 4 paper format copies of the Excerpts of Record on the Court. The parties shall also be served with the Excerpts of Record in paper format.

- (c) If the brief contains no deficiencies, the Court will order the party to file **10 copies of the brief in paper format, accompanied by certification that the brief is identical** to the version submitted electronically.
- (d) These paper copies of the brief shall be sent to the Court within 5 working days of the Court's order.
- (e) If the brief contains any deficiencies, the Court will order the party to cure the deficiencies and to submit a revised brief electronically within a specified time.
- (f) Failure to comply with the Court's orders regarding the filing of the brief may subject the case to dismissal.

Rule 7 - Signature

- (a) Electronic filings shall indicate each signatory by using an "s/" plus the typed name.

Rule 8 - Service

- (a) A Certificate of Service is required for all filings, and filers must comply with the provisions of Fed. R. App. P. 25 when they file electronically.
- (b) Sample Certificates of Service for documents filed using the appellate CM/ECF system are attached to this Order and may be downloaded from the "CM/ECF" section of the Court's website.
- (c) CM/ECF will generate a Notice of Docket Activity when any document is filed. This notice represents service of the document on parties who are registered participants in the appellate CM/ECF system. Registration for the appellate CM/ECF system constitutes consent to service through the Notice of Docket Activity.

- (1) The filing party is not required to serve a paper copy of any electronically-filed document on any party who has registered for the appellate CM/ECF system.
 - (2) The filing party must serve a paper copy of any electronically-filed document on any party who has not registered for the appellate CM/ECF system. In such instances, the filing party must comply with the paper service requirements of Fed. R. App. P. 25. The filing party may obtain the names and addresses of parties not registered for the appellate CM/ECF system by logging into CM/ECF, selecting Reports > Service List, and typing in the case number.
- (d) If a document is filed in paper format, filers must comply with Fed. R. App. P. 25.

Rule 9 - Filing Deadlines

- (a) Electronic filing is permitted at any time, except when the Court's CM/ECF system is temporarily unavailable due to routine or emergency maintenance.
- (b) An electronic filing successfully completed by 11:59 pm Pacific Time on a business day will be entered on the docket as of that date. The Court's CM/ECF system determines the date and time a filing is completed. A filing is timely only if accomplished in accordance with deadlines set by an applicable order, rule, or statute.
- (c) Should technical failure prevent timely electronic filing of any document, the filing party should preserve documentation of the failure and may seek relief from the Court.

Rule 10 - Technical Requirements

- (a) The technical requirements for running the appellate CM/ECF application can be found at <http://pacer.psc.uscourts.gov/cmecf/ecffaq.html#TE1>
- (b) All electronic versions of the pleadings must be submitted in Portable

Document Format ("PDF").

- (c) The electronic version filed with the Clerk must be generated by publishing to PDF from the **original** word processing file so that the text of the electronic version of the pleading may be searched and copied. **PDF images created by scanning paper documents do not comply with this order.**
 - (1) However, exhibits which are submitted as **attachments** to an electronically-filed pleading may be scanned and attached if the filer does not possess a word-processing-file version of the attachment.
 - (2) Currently, attachments are limited to 5MB in size. If an attachment is too big to be filed in a single volume, the filer will need to break it up into multiple attachments or contact the court for further instructions.
- (d) For more information concerning the submission of scanned documents, see the Court's website for answers to Frequently Asked Questions about the appellate CM/ECF system.

Rule 11 – Hyperlinks

- (a) Electronically-filed documents may contain hyperlinks.
- (b) Hyperlinks do not replace citations to the appendix, record, or legal authority. Documents must contain standard citations in support of statements of fact or points of law, in addition to any hyperlink. Hyperlinks are simply mechanisms for accessing material cited in a filed document and are not considered part of the appellate record. The Court accepts no responsibility for the availability or functionality of any hyperlink and does not endorse any organization, product, or content at any hyperlinked site.
- (c) Hyperlinks to district court documents are optional. However, parties must include the documents themselves in the excerpts of record, attachment, or exhibit. Instructions on creating hyperlinks can be found in the "CM/ECF" section of the Court's website in the ECF User Guide.

Rule 12 - Privacy

- (a) In compliance with Fed. R. Civ. P. 5.2 and Fed. R. App. P. 25, parties must refrain from including, or must partially redact where inclusion is necessary, the following personal data identifiers from all documents filed with the Court:
- ▶ Minors' names (use initials only);
 - ▶ Social Security numbers (use last four digits only);
 - ▶ Dates of birth (use year of birth only);
 - ▶ Financial account numbers (identify the type of account and institution and provide the last four digits of the account number);
 - ▶ Home address information (use phrases such as the "400 block of Elm").
- (b) **The filer bears sole responsibility for redacting documents.**

Rule 13 - Social Security and Immigration Cases

- (a) In compliance with Fed. R. Civ. P. 5.2 and Fed. R. App. P. 25, and various rules and statutory provisions, remote electronic public access to the CM/ECF file in Social Security and immigration cases is subject to restrictions. In order to implement these policies, the Court will restrict access to certain documents in these cases so that only the Court's judges and staff and the parties and attorneys in the case may access them through remote electronic access.
- (b) No restrictions will be placed on remote electronic public access to the Court's orders, opinions, and memorandum dispositions in Social Security and immigration cases.
- (c) Any party seeking to restrict public access to orders, opinions, and memorandum dispositions in these cases must file a motion explaining why such relief is required.
- (d) Non-parties may inspect the Court's case file at the Clerk's office.
- (e) Registered electronic filers in Social Security and immigration cases must

comply with all of the filing provisions of this order. When documents are filed electronically, CM/ECF automatically locks them to restrict access to the users authorized by this order. Access to any paper document received by the Clerk and scanned for attachment to the docket will be similarly restricted. The parties and attorneys in these cases should note that they cannot access filings in these cases through their PACER ID and Password, and instead must access these files through their CM/ECF Filer ID and Password.

Rule 14 -What is Attached to the Docket available on PACER

- (a) All documents that are filed electronically will be attached to the docket.
- (b) If the Court receives documents on CD or DVD, the Court will attach the electronic copy of those documents to the docket.
- (c) Excerpts of Record will not be scanned and will not be attached to the docket. District Court original files and transcripts and agency records used as the record on appeal will not be scanned and will not be attached to the docket.
- (d) Effective January 2, 2009, in the event the Court receives a document only in paper format in a case opened in 2009 or later, the Court will scan the document and attach it to the docket.

Rule 15 - Effect of Failure to Comply with this Order

- (a) The Clerk will contact any non-exempt attorney or court reporter who submits a document in paper format which should be filed electronically, and will provide the attorney or court reporter with a copy of this standing order.
- (b) If a non-exempt attorney or court reporter continues to submit documents in paper format after receiving notice of the order, the Clerk is authorized to strike the filings or take other action deemed necessary to enforce this order.

**SAMPLE CERTIFICATES OF SERVICE
FOR DOCUMENTS FILED USING CM/ECF**

Certificate of Service When All Case Participants Are CM/ECF Participants

I hereby certify that on _____ [date] _____, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ _____

Certificate of Service When Not All Case Participants Are CM/ECF Participants

I hereby certify that on _____ [date] _____, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within 3 calendar days, to the following non-CM/ECF participants:

s/ _____

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

CM/ECF EXEMPTION FORM

I am the counsel of record the court reporter
in the following cases pending in the U.S. Court of Appeals for the Ninth Circuit:
(for each case, list: case number, case name, & the party that you represent)

I hereby request an exemption from the Court's requirement that all attorneys and court reporters participate in the appellate CM/ECF system. The basis for my request is:

I understand that, if approved, this exemption will apply to all pending and future cases in this Court. If, in the future, I wish to participate in the appellate CM/ECF system, my ECF registration will apply to all pending and future cases.

Signature: _____

Date: _____

Name: _____

Address: _____

Phone Number: _____

Fax Number: _____

Mail this completed form to:
U.S. Court of Appeals for the Ninth Circuit
Attn: CM/ECF Exemption Form
P.O. Box 193939
San Francisco, CA 94119-3939