

ATTENTION

The “Model Local District Court Rules for Electronic Case Filing” are posted on this website for informational purposes only. These model rules are not the Local Rules for the Southern District of West Virginia. Local Rules will be developed to accommodate the Southern District of West Virginia’s local practices and procedures for the new Electronic Case Filing system.

Model Local District Court Rules for Electronic Case Filing

Approved by the Judicial Conference of the United States

**September 2001
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Introduction

Because most existing court rules and procedures have been designed with paper court documents in mind, some modifications are needed to address issues arising when court documents are filed in electronic form. This set of model local rules has been developed for federal district and bankruptcy courts implementing the electronic case filing capabilities of the federal judiciary's Case Management/Electronic Case Files (CM/ECF) Project, and can be adapted by courts that offer some other method of electronic filing of court documents.

The model was compiled by a subcommittee of the Court Administration and Case Management Committee that included as members representatives from the Committee on Automation and Technology and the Committee on Rules of Practice and Procedure. The subcommittee reviewed the rules and procedures for electronic filing developed in the CM/ECF prototype district and bankruptcy courts. It also undertook an informal survey of those courts to find out how well those procedures operated. The information indicated general satisfaction with courts' existing procedures. There was also general agreement that it was essential to include the bar in the process of developing and modifying the local procedures governing electronic filing.

This set of model local rules for electronic case filing is based to a significant extent on the procedures used in courts that served as prototype courts for the federal judiciary's CM/ECF Project. There are separate sets of model local rules for district courts and bankruptcy courts. They use the same terminology and are identical to the extent possible and appropriate. Courts are free to adapt the provisions of these model local rules as they choose.

The Federal Rules of Procedure (Civil Rule 5(e), Bankruptcy Rules 5005, 7005 and 8008) provide that a court may "by local rule" permit filing, signing and verification of documents by electronic means. Thus, each court that intends to allow electronic filing should have at least a general authorizing provision in its local rules. The model rules developed here may be used either as a set of local rules, or as the contents for a general order or other administrative procedures. The use of local rules promotes the requirements of the Rules Enabling Act, provides better public notice of applicable procedures, and allows for input from the bar. On the other hand, use of general orders gives courts more flexibility to modify requirements and rules in response to changing circumstances. If local rules are used, it should be noted that Fed.R.Civ.P. 83, Fed.R.Bankr.P. 9029 and related Judicial Conference policy require that rule numbering conform to the numbering system of the Federal Rules. The model rules could be added as a group to local rules corresponding to Fed.R.Civ.P. 5 or 83.

Note: These model procedures use the term "Electronic Filing System" to refer to the court's system that receives documents filed in electronic form. The term "Filing User" is used to refer to those who have a court-issued log-in and password to file documents electronically.

Rule 1 - Scope of Electronic Filing

The court will designate which cases will be assigned to the Electronic Filing System. Except as expressly provided and in exceptional circumstances preventing a Filing User from filing electronically, all petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the court in connection with a case assigned to the Electronic Filing System must be electronically filed.

The filing of the initial papers, including the complaint and the issuance and service of the summons, will be accomplished in the traditional manner on paper rather than electronically. In a case assigned to the Electronic Filing System after it has been opened, parties must promptly provide the clerk with electronic copies of all documents previously provided in paper form. All subsequent documents must be filed electronically except as provided in these rules or as ordered by the court.

Notwithstanding the foregoing, attorneys and others who are not Filing Users in the Electronic Filing System are not required to electronically file pleadings and other papers in a case assigned to the System. Once registered, a Filing User may withdraw from participation in the Electronic Filing System by providing the clerk's office with written notice of the withdrawal.

Derivation

The first and third paragraphs of the Model Rule are derived from the Southern District of California Bankruptcy procedures, with the exception of the last sentence of the third paragraph, which is derived from the Eastern District of Virginia Bankruptcy procedures. The second paragraph is adapted from the Northern District of Ohio procedures.

Commentary

1. The Model Rule provides that the court will designate which cases will be assigned to the electronic filing system. It also establishes a presumption that all documents filed in cases assigned to the electronic filing system should be electronically filed. Some courts have designated certain types of cases for electronic filing, while some have determined that all cases are appropriate for electronic filing. However, the Rule does not make electronic filing mandatory. Mandatory electronic filing appears to be inconsistent with Fed.R.Civ.P. 5, which states that a court "may permit" papers to be filed electronically, and provides that the clerk "shall not refuse to accept for filing any paper presented ... solely because it is not presented in proper form." However, the Federal Rules clearly permit a court to strongly encourage lawyers to participate in electronic case filing, and the Model Rule is written to provide such encouragement.

2. For cases assigned to the electronic filing system after documents have already been filed conventionally, the Model Rule states that the parties must provide electronic copies of all previously filed documents. This will include the summons and complaint. In cases removed to the federal court, parties in cases assigned to the electronic filing system are required to provide electronic copies of all previous filings in the state court. Where documents filed in paper form were previously scanned by the court, electronic filing would not be necessary.

3. Some courts offering electronic filing require fees to be paid in the traditional manner, while others permit or require electronic payment of fees. Nothing in the rule would constrain the court in providing for a desired method of payment of fees.

4. Electronic case filing raises privacy concerns. Electronic case files can be more easily accessible than traditional paper case files, so there is a greater risk of public dissemination of sensitive information found in case files. See Model Rule 12. The Judicial Conference is investigating and evaluating the privacy concerns attendant to electronic case files, and is working to develop a policy.

Rule 2 - Eligibility, Registration, Passwords

Attorneys admitted to the bar of this court, including those admitted pro hac vice, may register as Filing Users of the court's Electronic Filing System. Registration is in a form prescribed by the clerk and requires the Filing User's name, address, telephone number, Internet e-mail address, and a declaration that the attorney is admitted to the bar of this court.

If the court permits, a party to a pending civil action who is not represented by an attorney may register as a Filing User in the Electronic Filing System solely for purposes of the action. Registration is in a form prescribed by the clerk and requires identification of the action as well as the name, address, telephone number and Internet e-mail address of the party. If, during the course of the action, the party retains an attorney who appears on the party's behalf, the attorney must advise the clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

Provided that a Filing User has an Internet e-mail address, registration as a Filing User constitutes consent to electronic service of all documents as provided in these rules in accordance with the Federal Rules of Civil Procedure.

Once registration is completed, the Filing User will receive notification of the user log-in and password. Filing Users agree to protect the security of their passwords and immediately notify the clerk if they learn that their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

Derivation

The first three paragraphs of Model Rule 2 are derived from the Eastern District of New York procedures. The last paragraph is derived from the Northern District of Ohio procedures.

Commentary

1. The Model Rule specifically provides that attorneys admitted pro hac vice can be filing users in electronic filing systems. The Model Rule also recognizes that a court may wish under certain circumstances to permit pro se filers to take part in electronic case filing. Such participation is left to the discretion of the court.

2. The Model Rule provides that a person who registers with the System (a Filing User) thereby consents to electronic service of documents subject to the electronic filing system. Pending amendments to the Federal Rules of Civil Procedure permit electronic service on a person who consents "in writing." The Committee Notes indicate that the consent may be provided by electronic means. A court may "establish a registry or other facility that allows advance consent to service by specified means for future action." Thus, a court might use CM/ECF registration as a means to have parties consent to receive service electronically.

3. Several districts currently have provisions addressing the possibility of compromised passwords. Such a provision may be useful in a User Manual for the electronic filing system. The provision might read as follows: Attorneys may find it desirable to change their court assigned passwords periodically. In the event that an attorney believes that the security of an existing password has been compromised and that a threat to the System exists, the attorney must give immediate notice by telephone to the clerk, chief deputy clerk or systems department manager and confirm by facsimile in order to prevent access to the System by use of that password.

Rule 3 - Consequences of Electronic Filing

Electronic transmission of a document to the Electronic Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure and the local rules of this court, and constitutes entry of the document on the docket kept by the clerk under Fed.R.Civ.P. 58 and 79. When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently

submitted electronically under Rule 1, a document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the court. Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight local time where the court is located in order to be considered timely filed that day.

Derivation

The first two paragraphs of Model Rule 3 are adapted from the Eastern District of New York procedures. The third paragraph is adapted from the Northern District of Ohio procedures.

Commentary

1. The Model Rule provides a "time of filing" rule that is analogous to the traditional system of file stamping by the Clerk's office. A filing is deemed made when it is acknowledged by the Clerk's office through the CM/ECF system's automatically generated Notice of Electronic Filing.

2. The Model Rule makes clear that the electronically filed documents are considered to be entries on the official docket.

Rule 4 - Entry of Court Orders

All orders, decrees, judgments, and proceedings of the court will be filed in accordance with these rules which will constitute entry on the docket kept by the clerk under Fed.R.Civ.P. 58 and 79. All signed orders will be filed electronically by the court or court personnel. Any order filed electronically without the original signature of a judge 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 had been entered on the docket in a conventional manner.

A Filing User submitting a document electronically that requires a judge's signature must promptly deliver the document in such form as the court requires.

Derivation

The first two sentences of the first paragraph of the Model Rule are adapted from the Eastern District of New York procedures. The last sentence is derived from the Northern District of Georgia Bankruptcy Court. The second paragraph is adapted from Eastern District of New York procedures.

Commentary

1. Not all courts have a provision in their electronic filing procedures addressing the electronic entry of court orders. In at least one court without such a provision, a question arose about the validity of electronically filed court orders. The Model Rule specifically states that an electronically filed court order has the same force and effect as an order conventionally filed.

2. The Model Rule contemplates that a judge can authorize personnel, such as a law clerk or judicial assistant, to electronically enter an order on the judge's behalf.

3. The Model Rule leaves the method for submitting proposed orders to the discretion of the court.

Rule 5 - Attachments and Exhibits

Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the court permits conventional filing. A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the court. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under this rule do so without prejudice to their right to timely file additional excerpts or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are directly germane.

Derivation

The Model Rule is adapted from the Southern District of New York Bankruptcy procedures.

Commentary

1. One issue that has arisen in most courts using electronic filing relates to attachments or exhibits not originally available to the filer in electronic form, and that must be scanned (or imaged) into Portable Document Format before filing. Examples include leases, contracts, proxy statements, charts and graphs. A scanned document creates a much larger electronic file than one prepared directly on the computer (*e.g.*, through word processing). The large documents can take considerable time to file and retrieve. The Model Rule provides that if the case is assigned to the electronic filing system, the party must file this type of material electronically, unless the court specifically permits conventional filing.

2. It is often the case that only a small portion of a much larger document is relevant to the matter before the court. In such cases, scanning the entire document imposes an inappropriate burden on both the litigants and the courts. To alleviate some of this inconvenience, the Model Rule provides that a Filing User must submit as the exhibit only the relevant excerpts of a larger document. The opposing party then has a right to submit other excerpts of the same document under the principle of completeness.

3. This rule is not intended to alter traditional rules with respect to materials that are before the court for decision. Thus, any material on which the court is asked to rely must be specifically provided to the court.

Rule 6 - Sealed Documents

Documents ordered to be placed under seal must be filed conventionally and not electronically unless specifically authorized by the court. A motion to file documents under seal may be filed electronically unless prohibited by law. The order of the court authorizing the filing of documents under seal may be filed electronically unless prohibited by law. A paper copy of the order must be attached to the documents under seal and be delivered to the clerk.

Derivation

The Model Rule is adapted from the Western District of Missouri procedures.

Commentary

1. The Model Rule recognizes that other laws may affect whether a motion to file documents under seal, or an order authorizing the filing of such documents, can or should be electronically filed. It is possible that electronic access to the motion or order may raise the same privacy concerns that gave rise to the need to file a document conventionally in the first place. For similar reasons, the actual documents to be filed under seal should ordinarily be filed conventionally.

2. See Model Rule 12 for another provision addressing privacy concerns arising from electronic filing.

Rule 7 - Retention Requirements

Documents that are electronically filed and require original signatures other than that of the Filing User must be maintained in paper form by the Filing User until [number] years after all time periods for appeals expire. On request of the court, the Filing User must provide original documents for review.

Derivation

Model Rule 7 is adapted from the Eastern District of Virginia Bankruptcy procedures.

Commentary

1. Because electronically filed documents do not include original, handwritten signatures, it is necessary to provide for retention of certain signed documents in paper form in case they are needed as evidence in the future. The Model Rule requires retention only of those documents containing original signatures of persons other than the person who files the document electronically. The filer's use of a log-in and password to file the document is itself a signature under the terms of Model Rule 8.

2. The Model Rule places the retention requirement on the person who files the document. Another possible solution is to require the filer to submit the signed original to the court, so that the

court can retain it. Some government officials have expressed a preference to have such documents retained by the court, in order to make it easier to retrieve the documents for purposes such as a subsequent prosecution for fraud.

3. Courts have varied considerably on the required retention period. Some have limited it to the end of the litigation (plus the time for appeals). Others have required longer retention periods (four or five years). Assuming that the purpose of document retention is to preserve relevant evidence for a subsequent proceeding, the appropriate retention period might relate to relevant statutes of limitations.

4. Some districts require the filer to retain a paper copy of *all* electronically filed documents. Such a requirement seems unnecessary, and it tends to defeat one of the purposes of using electronic filing. Other courts have required retention of "verified documents," i.e., documents in which a person verifies, certifies, affirms, or swears under oath or penalty of perjury. See, *e.g.*, 28 U.S.C. 1746 (unsworn declarations under penalty of perjury).

Rule 8- Signatures

The user log-in and password required to submit documents to the Electronic Filing System serve as the Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of Fed.R.Civ.P. 11, the Federal Rules of Civil Procedure, the local rules of this court, and any other purpose for which a signature is required in connection with proceedings before the court. Each document filed electronically must, if possible, indicate that it has been electronically filed. Electronically filed documents must include a signature block [in compliance with local rule number [] if applicable] and must set forth the name, address, telephone number and the attorney's [name of state] bar registration number, if applicable. In addition, the 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.

No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

Documents requiring signatures of more than one party must be electronically filed either by: (1) submitting a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document; (3) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three business days after filing; or (4) in any other manner approved by the court.

Derivation

The first and third paragraphs of the Model Rule are adapted from the Northern District of Ohio procedures. The second paragraph is derived from the Southern District of New York Bankruptcy procedures.

Commentary

1. Signature issues are a subject of considerable interest and concern. The CM/ECF system is designed to require a log-in and password to file a document. The Model Rule provides that use of the log-in and password constitutes a signature, and assures that such a signature has the same force and effect as a written signature for purposes of the Federal Rules of Civil Procedure, including Fed.R.Civ.P. 11, and any other purpose for which a signature is required on a document in connection with proceedings before the court.

2. At the present time, other forms of digital or other electronic signature have received only limited acceptance. It is possible that over time and with further technological development a system of digital signatures may replace the current password system.

3. Some users of electronic filing systems have questioned whether an s-slash requirement is worth retaining. The better view is that an s-slash is necessary; otherwise there is no indication that documents printed out from the website were ever signed. The s-slash provides some indication when the filed document is viewed or printed that the original was in fact signed.

4. The second paragraph of the Model Rule does not require an attorney or other Filing User to personally file his or her own documents. The task of electronic filing can be delegated to an authorized agent, who may use the log-in and password to make the filing. However, use of the log-in and password to make the filing constitutes a signature by the Filing User under the Rule, even though the Filing User does not do the physical act of filing.

5. Issues arise when documents being electronically filed have been signed by persons other than the filer, e.g., stipulations and affidavits. The Model Rule provides for a substantial amount of flexibility in the filing of these documents. Courts may wish to modify or narrow the options if, for example, they believe that administering the three-day period for endorsements would be burdensome.

6. Courts may wish to underscore the fact that a Filing User's log-in and password constitutes the Filing User's signature, by including a statement to that effect on the registration form.

Rule 9- Service of Documents by Electronic Means

Each person electronically filing a pleading or other document must serve a "Notice of Electronic Filing" to parties entitled to service under the Federal Rules of Civil Procedure and the local rules. The "Notice of Electronic Filing" must be served by e-mail, hand, facsimile, or by first-class mail postage prepaid. Electronic service of the "Notice of Electronic Filing" constitutes service of the filed document. Parties not deemed to have consented to electronic service are entitled to receive a paper copy of any electronically filed pleading or other document. Service of such paper copy must be made according to the Federal Rules of Civil Procedure and the local rules.

Derivation

Model Rule 9 is derived from the Western District of Missouri procedures.

Commentary

1. The pending amendments to the Federal Rules (Fed.R.Civ.P. 5(b)) authorizing service of documents by electronic means do not permit electronic service of process for purposes of obtaining personal jurisdiction (i.e., Rule 4 service). The Model Rule covers only service of documents after the initial service of the summons and complaint.

2. The CM/ECF system automatically generates a Notice of Electronic Filing at the time a document is filed with the system. The Notice indicates the time of filing, the name of the party and attorney filing the document, the type of document, and the text of the docket entry. It also contains an electronic link (hyperlink) to the filed document, allowing anyone receiving the Notice by e-mail to retrieve the document automatically. The CM/ECF system automatically sends this Notice to all case participants registered to use the electronic filing system. If the court is willing to have this Notice itself constitute service, it may, under pending amendments to the Federal Rules, do so through a local rule. The pending amendments require a local rule if a court wants to authorize parties to use its transmission facilities to make electronic service. The Model Rule does not include such a provision, but could be easily modified to provide that the court's automatically generated notice of electronic filing constitutes service.

3. A pending amendment to Fed.R.Civ.P. 6(e) provides that the three additional days to respond to service by mail will apply to electronic service as well. The Committee Note states: Electronic transmission is not always instantaneous, and may fail for any number of reasons. It may take three days to arrange for transmission in readable form. Providing added time to respond will not discourage people from asking for consent to electronic transmission, and may encourage people to give consent. The more who consent, the quicker will come the improvements that make electronic service ever more attractive.

The Model Rule does not specifically provide for the added three days, but such a provision would not be necessary if the proposed amendment to Fed.R.Civ.P. 6(e) takes effect.

4. The CM/ECF system is designed so that a person may request electronic notice of all filings in a matter even though that person has not obtained a password and registered as a Filing User. Such electronic notice would not constitute service under the Model Rule, because the effectiveness of electronic service is dependent on registration with the system. The court should be aware of this possibility and should encourage all those who request electronic notice to register for a system password.

Rule 10 - Notice of Court Orders and Judgments

Immediately upon the entry of an order or judgment in an action assigned to the Electronic Filing System, the clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice

required by Fed.R.Civ.P. 77(d). The clerk must give notice to a person who has not consented to electronic service in paper form in accordance with the Federal Rules of Civil Procedure.

Derivation

The Model Rule is adapted from the Eastern District of New York procedures.

Commentary

1. Pending amendments to Fed.R.Civ.P 77(d) authorize electronic notice of court orders where the parties consent. The Model Rule provides that for all Filing Users in the electronic filing system, electronic notice of the entry of an order or judgment has the same force and effect as traditional notice. The CM/ECF system automatically generates and sends a Notice of Electronic Filing upon entry of the order or judgment. The Notice contains a hyperlink to the document.

Rule 11 - Technical Failures

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court.

Derivation

The Model Rule is adapted from the Eastern District of New York procedures.

Commentary

1. CM/ECF is designed so that filers access the court through its Internet website. The Model Rule addresses the possibility that a party may not meet a filing deadline because the court's website is not accessible for some reason. Cf. Fed.R.Civ.P. 6 (permitting extension of time when "weather or other conditions have made the office of the clerk of the district court inaccessible"). The Model Rule also addresses the possibility that the filer's own unanticipated system failure might make the filer unable to meet a filing deadline.

2. The Model Rule does not require the court to excuse the filing deadline allegedly caused by a system failure. The court has discretion to grant or deny relief in light of the circumstances.

Rule 12 - Public Access

A person may review at the clerk's office filings that have not been sealed by the court. A person may also access the Electronic Filing System at the court's Internet site [Internet address] by obtaining a PACER log-in and password. A person who has PACER access may retrieve docket sheets and documents. Only a Filing User under Rule 2 of these rules may file documents.

Commentary

1. The first paragraph of this rule is intended to make it clear that anyone can access all unsealed court files and documents at the courthouse, whether such file is electronic or in hard copy. It also explains that a person or entity that has a PACER login and password may access these same court files and documents over the Internet.

2. The original second paragraph explaining that a person may apply for an order limiting access to or prohibiting the electronic filing of certain identifying information has been omitted. This portion of the rule is not necessary given that the policy for civil cases requires the redaction of any personal identifier (social security number, financial account number, date of birth, names of minor children) if it must be included in a filed document. (See Proposed Model Guideline Rule for United States District Courts Addressing Judicial Conference Privacy Policy Regarding Public Access to Electronic Case Files and Proposed Model Notice of Electronic Availability of Case File Information.) There was also a concern that any suggestion of the filing of a specific motion in the rules might encourage such a motion to be filed when it is not necessary.

3. The original third paragraph was deleted out of concern that it may not be constitutional or and enforceable. There are identity theft statutes that could be enforced if any such activity were tied to the access of electronic case files.

Footnote

1. An example of a local rule authorizing electronic filing is as follows:

The court will accept for filing documents submitted, signed or verified by electronic means that comply with procedures established by the court.