

**CM/ECF
ADMINISTRATIVE PROCEDURES
MANUAL**

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**



EFFECTIVE August 28, 2006

As Revised September 29, 2006

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1. MANDATORY ELECTRONIC CASE FILING & PRIVACY

- (a) **Electronic Filing Mandatory.** As authorized by Administrative Order effective August 28, 2006, and Local Rules, unless otherwise excepted as set forth in Section 8(b) of this manual, electronic filing is mandatory in the United States District Court for the District of New Mexico.

 - (1) **PROCESSES ARE UNDER REVIEW FOR ENFORCEMENT OF MANDATORY E-FILING AND WILL BE POSTED PRIOR TO 11/20/2006.**
 - (2) **PROCESSES ARE UNDER REVIEW FOR A PROCEDURE TO REQUEST AN EXEMPTION FROM THE MANDATORY FILING REQUIREMENT AND WILL BE POSTED PRIOR TO 11/20/2006.**
- (b) **Local Rules And Manual Govern Electronic Filing.** This manual, together with Rule 5 of Local Civil Rules of the United States District Court for the District of New Mexico and Rule 49 of the Local Criminal Rules of the United States District Court for the District of New Mexico, govern the procedures for electronic filing.
- (c) **Privacy Concerns.**

 - (1) In compliance with the privacy policy of the Judicial Conference of the United States and the E-Government Act of 2002, sensitive information should not be included in any document filed with the Court unless such inclusion is necessary and relevant to the case.
 - (2) Any personal information not otherwise protected will be made available over the Internet via PACER.
 - (3) Local Criminal Rule 57.5 and the Court’s February 18, 2003 Privacy Policy, set forth the rules governing privacy protection for any filing made with the Court. Filers must familiarize themselves with the rules governing mandated redaction, exceptions from the redaction requirement, the sealed pleadings and protective order options, and waiver of privacy protections.
- (d) **Manual Modifications/Additional Assistance.** Modifications to this manual may be made from time to time by the Clerk of Court. Notice of all modifications to these CM/ECF Procedures will be given via the Court's website at www.nmcourt.fed.us. In addition to this manual, the Court’s website also contains “training manuals,” “frequently asked questions” and “helpful hints” sections for CM/ECF Procedures.

2. ELECTRONIC RECORD

- (a) **The Electronic Record is the Official Record.** The electronic record is the official record of the Court and it replaces the traditional paper record. The Electronic Record includes documents filed electronically by Participants, as well as documents originally filed in paper format that have been scanned and electronically submitted by the Clerk’s Office. Any document in the Electronic Record has the same legal effect as a paper document.
- (b) **Electronic Filing or “e-filing”.** Electronic Filing or “e-filing” is the process by which a Participant electronically transfers a PDF document to the Court’s CM/ECF system for processing into the Electronic Record.
- (c) **Electronic Submission or “e-submitting”.** Electronic submission or “e-submitting” is

the process by which the Clerk's Office transmits an originally filed paper document to the Electronic Record. This function is performed only by the Clerk's Office.

- (d) **Retention of paper originals of documents.** The Clerk will maintain paper originals of documents only as long as required to ensure that the information has been accurately transferred to the Court's database, for other Court purposes, or as required by other applicable laws or rules.

3. PARTICIPANT REGISTRATION

- (a) **Registration Constitutes Waiver Of Service.** Registration constitutes waiver of the right, under rule 5 of the Federal Rules of Civil Procedure, to personal service or service by first class mail.

(b) **Required and Permitted Registrants.**

(1) **Members of the Federal Bar Must Register.** All members of the New Mexico Federal Bar must register for a CM/ECF account to facilitate service of notices and orders from the Court, as well as meeting the service requirements of the other parties in the case. Failure to register will result in a loss of good standing.

(2) **Attorneys Who Are Not Federal Bar Members May Register.** An attorney who is not a member of the New Mexico Federal Bar, but who is licensed to practice in New Mexico and is in good standing, may register for a CM/ECF account.

(3) ***Pro Hac Vice* Attorneys and *Pro Se* Individuals May Register And, If Permitted, May File Electronically.**

(A) Anyone May Register and Waive Service, But Registration Does Not Entitle Everyone to File Electronically. Attorneys who are not members of the New Mexico Federal Bar or licensed in New Mexico may register for a CM/ECF account. *Pro-se* parties may register for a CM/ECF account, but must request permission from the Court to electronically file.

(B) *Pro hac vice* attorneys. Attorneys licensed outside the District seeking permission to participate *pro hac vice*, must file their D.N.M.LR-Civ. 83.3 petition electronically.

(C) *Pro Se* Parties. Parties who are not represented by an attorney are called "*pro se*" parties. The *pro se* party must familiarize himself or herself with the District's *pro se* packet, and comply with all applicable rules, including the District's Local Rules. The *pro se* party must also pay particular attention to Civil Rules 83.5 and 83.6. With the Court's order, a *pro se* party may file documents electronically in a particular action. When any such *pro se* party wishes to participate in a particular action electronically, he or she may electronically file a "*Pro Se* Petition For Permission To File Electronically."

(c) **Registration Requirements.**

(1) **Registered Participant** (Participant) is any person who has successfully completed the registration and training requirements, and has been issued a CM/ECF login and password. A Registered Participant may authorize employees to act on his or her behalf.

- (2) **Overview Of Requirements.** To become a Participant in the Court's CM/ECF system, individuals must:
- (A) maintain an Internet e-mail address where notice and service will be made;
 - (B) secure and maintain a National PACER account for viewing documents at www.pacer.psc.uscourts.gov, which charges for viewing docket sheets and documents;
 - (C) complete and sign the registration form found on the Court's website at www.nmcourt.fed.us; and
 - (D) demonstrate proficiency with electronic filing in CM/ECF.
- (3) **Training Requirements.**
- (A) Participants and authorized employees acting on behalf of a Participant who have not electronically filed in the past, either in this Court or in another federal court, must attend a Court-sponsored training class to become a CM/ECF Participant in this Court.
 - (B) Participants and authorized employees acting on behalf of a Participant, who have previously filed electronically with the Court, are not required to attend a Court-sponsored training class to become a CM/ECF Participant.
 - (C) Those who demonstrate they have successfully filed electronically using a CM/ECF system in another federal court may apply to become a Participant in this District without having to attend the Court sponsored training. However, such persons or entities must be conversant with this District's Local Rules and this Procedures Manual.
- (d) **Logins and Passwords.**
- (1) Participants will receive their login and password either at the time of registration (for those not required to attend training) or after a training class sponsored by the Court. If an attorney is registered in another district, the login and password will be e-mailed to that attorney.
 - (2) Upon receipt of a password, the Participant is responsible for immediately changing it. Those attending training will be shown how to do this during training; those who already are proficient in CM/ECF procedures are responsible for changing the password online.
 - (3) Any CM/ECF password issued for electronic filing must be used exclusively by the Participant to whom the password is assigned or by his or her authorized employee(s).
 - (4) No Participant may knowingly permit a password to be used by anyone who is not authorized to use the password and no person may knowingly use the password of a Participant unless such person is so authorized.
 - (5) If an employee of a Participant is no longer authorized to use the password, or if the Participant has reason to believe that the security of a password has been compromised, it is the Participant's responsibility to change the password.
 - (6) In the event the Court rejects or suspends Login and Password privileges, the Participant will be notified.

4. PUBLIC ACCESS, “ONE FREE LOOK” AT DOCUMENTS, AND COPYING CHARGES

- (a) Free Public Access At Clerk’s Office Terminals.** Free on-line access to the electronic docket and documents is available during regular business hours at public computer terminals located at each Clerk’s Office.
- (b) “One Free Look” Upon E-Mail Notice.**
 - (1) Upon receipt of an e-mail notification of an electronic filing, the recipient will have one opportunity to look at the document, save it, or print it, without incurring any PACER fees.
 - (2) Participants may specify additional e-mail addresses to receive the electronic notification of filings. Each of these addresses will also be entitled to the “one free look.”
 - (3) The one-free-look period expires 15 calendar days from the date of the e-mail.
- (c) Online Access Anytime For A Fee.** PACER services are available on-line at any time, but a fee will be charged for electronically viewing docket sheets and documents.
- (d) Clerk’s Office Copying Services And Charges.** Conventional copies and certified copies of electronically-filed documents may be obtained at the Office of the Clerk. The fee for such copying and certification is governed by 28 U.S.C. § 1914 and 28 U.S.C. § 1930. Refer to the Court’s Fee Schedule at www.nmcourt.fed.us for the costs associated with copies.

5. PAYMENT OF FEES

- (a) On-Line Payment of Fees.** Payment for CM/ECF transactions that require a fee must be made on-line on the same day that the transaction is electronically filed.
- (b) Acceptable Credit Cards.** Only VISA, Mastercard, American Express, Discover and Diners Club credit cards will be accepted. Debit cards from the above mentioned providers that do not require a “PIN” code will also be accepted.
- (c) Rejected Credit Card.** Any transaction declined by the credit card issuer for any reason must be paid to the Court by counsel in cash or by check or money order by the close of business on the next business day after notification by Court staff of the deficiency. Failure to timely submit the fees will result in revocation of the CM/ECF password.
- (d) PAY.GOV Set-Up.** The first time a Participant attempts to electronically file a document which requires the payment of fees, PAY.GOV will prompt the Participant to provide credit card information.

6. SIGNATURES AND VERIFIED DOCUMENTS

- (a) Filing Constitutes Signature.**
 - (1) **Electronic signature** for CM/ECF purposes does not mean a digital image of a person’s signature. Rather, the “electronic signature” is the CM/ECF login and password that a person uses to either electronically file or electronically submit a document.
 - (a) When e-filing, the electronic signature constitutes the signature of the Participant for all purposes under the Federal Rules.

- (b) When e-submitting, the electronic signature represents the certification of the submitter that the electronic submission is a true and valid copy of the paper copy of the document.
- (2) **Signature block.** The following is an example of the language that can be used for a signature block in an electronically filed document:

Electronically Filed

/s/ John Doe, Attorney at Law

(b) Electronic Filing of Verified Documents.

- (1) A “Verified Document” is:
- (A) a document that must contain an original third-party signature;
 - (B) a document that requires verification under the Federal Rules;
 - (C) an unsworn declaration as provided in 28 U.S.C. § 1746; or
 - (D) an affidavit or pleading in which a person verifies, certifies, affirms or swears under oath or penalty of perjury concerning the truth of matters set forth therein.
- (2) A Participant who files a Verified Document electronically must ensure that the electronic version conforms to the original signed document.
- (3) The full, printed name of each person signing a Verified Document must appear in the electronic version.

(c) Retention of Verified Documents.

- (1) Electronic filing of a Verified document constitutes Participant’s representation that the original signed document is in Participant’s possession at the time of filing.
- (2) A Participant who electronically files a Verified Document in a case must retain the original of the document for not less than (a) one year after the maximum allowed time to complete appellate proceedings, or (b) one year after the case is closed, whichever is later. The original document must be produced upon order of the Court.

7. SERVICE & NOTICE

- (a) Complaints.** Service of a civil complaint is governed by Rule 4 of the Federal Rules of Civil Procedure.
- (b) Service of Documents Not Governed by Rule 4, Rule 4.1, or Rule 45 of the Federal Rules of Civil Procedure.**
- (1) Whenever a pleading or other document is filed electronically in accordance with these procedures, CM/ECF will generate a Notice of Electronic Filing (NEF) which is an e-mail verification that the Court received the e-filed document. The NEF is the official notice of the filing to all parties and includes the text of the docket entry, as well as a link to the filed document.
- (2) If the recipient is a Participant in CM/ECF, e-mailing of the NEF is the equivalent

of service by first class mail.

- (3) If the recipient is not a Participant in CM/ECF, service must be made under the Federal Rules of Civil and Criminal Procedure.
- (4) Whenever a pleading or other document is filed in paper form, the filer must serve conventional copies on all parties to the case.

(c) Certificates of Service.

- (1) A certificate of service on all parties is still required when a document is filed electronically. The certificate must state the manner in which service was accomplished on each party and must appear as the last page of the document being electronically filed.
- (2) The following is an example of the language that includes different methods of service:

I HEREBY CERTIFY that on the ___ day of _____, 2006, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Robert Jones, Attorney for Defendant Samuel Jones
(e-mail address)
Joe Roberts, Attorney for Defendant Smith
(e-mail address)

AND I FURTHER CERTIFY that on such date I served the foregoing on the following non-CM/ECF Participants in the manner indicated:

Via first class mail, postage prepaid addressed as follows:

John and Jane Idaho Construction Corp., Inc.
1234 South 1st Street c/o BR Corporation
Smalltown, NM 88001

Via certified mail, return receipt requested, addressed as follows:

USA First Bank, N.A.
Attn: I. M. Rich, President
616 Parkway Drive
Las Cruces, NM 45454

_____/s/_____
R. Johnson, Attorney for Movant

8. ELECTRONIC FILING

(a) PDF Format.

- (1) "PDF" means "portable document format." Documents in their native format (such as WordPerfect), as well as paper documents that have been scanned, can be converted to PDF format. The benefit of the PDF format is that it generally can be opened by a different hardware and software without changing the layout, format, links, and images of the original document.
- (2) All electronically-filed documents must be converted into portable document format (PDF) before filing.
- (3) The Participant is responsible for the legibility of the scanned image of any document not generated directly from a word processing application.

(b) Documents Excepted from Mandatory Electronic Filing.

The following types of cases and/or documents are not to be filed electronically, unless otherwise authorized by the Court:

- (1) Any document filed by a party proceeding *pro se*, who has not secured prior approval to file electronically.
- (2) Social Security transcripts.
- (3) state court records submitted in habeas corpus proceedings.
- (4) Any document that cannot be scanned or otherwise converted to electronic format.

(c) File Date.

- (1) Unless otherwise ordered by the Court, an electronic document is considered filed on the date of the electronic transfer, including weekends and holidays. A filing day is defined as 12:00:00 a.m. to 11:59:59 p.m. This paragraph supersedes the timing provisions of D.N.M.LR-Civ.5.5(a).
- (2) A Judge may specifically require an electronic document to be filed on a certain date and/or by a certain time.

(d) Filing Civil Complaints and Removals.

- (1) Civil Complaints, Notices of Removal, and Civil Case Cover Sheets must be filed through CM/ECF, and accompanied by the applicable fee, payable by credit card.
- (2) The Civil Case Cover sheet must be submitted in PDF format as an attachment to the Complaint or Notice of Removal.
- (3) When filing a Notice of Removal, the copies of the state court documents are to be filed electronically as attachments to the Notice of Removal. Each document is to be added as a separate attachment.

(e) Filing Summonses.

- (1) When initiating a new civil proceeding, the Participant must prepare the standard Summons for a civil proceeding and electronically file it as an attachment to the electronically filed Complaint. Thereafter, the Clerk will electronically issue the summons and return it to the party who submitted it.
- (2) Affidavits of service, which may include executed summonses, are filed electronically through CM/ECF.

(f) Motions and Related Documents.

- (1) Captions In Responsive Documents Must Contain Docket Numbers.** A Document that is submitted in response to, in support of, or in opposition to another document must reference the docket number of the other document in the caption.
- (2) Each Motion Is Filed As A Separate Document.** Motions and responses are always filed as separate documents. For example, a Cross-Motion for Summary Judgment should never be combined with a Response to a Motion for Summary Judgment. It is critical that the Cross Motion be filed separately so that it will appear on the Pending Motions Report and can be properly linked to any subsequent Responses, Replies, Notices and Orders.
- (3) Supporting Exhibits or Affidavits Are Filed As Attachments.** Exhibits or affidavits that are filed *concurrently* in support of a motion or memorandum are filed electronically as attachments. The filer is given the option of including attachments when the PDF file is selected for filing and should list the attachments in a logical sequence.
- (4) Linking Separate-Filed Documents.** If a brief, exhibit, or affidavit in support is filed after a separately-filed document, the original document must not be refiled. As with other separately-filed documents, the filer references the original document in the caption and during e-filing, chooses the option that will link the two documents.

(g) Attachments, Large Documents, and Administrative Records.

- (1) Unless otherwise ordered by the Court, Participants must submit attachments in electronic form. Attachments that consist of excerpted material must be clearly and prominently identified as such.
- (2) Attachments that are not in paper format must be scanned or converted by the filer into PDF format for electronic submission into the System.
- (3) Scanned documents that exceed the allowable document size will fail to file due to transmission time, and CM/ECF will issue an error message. Therefore, documents that exceed allowable document size will need to be divided into logical segments for filing as attachments, with each segment easily understood as a stand alone document. The CM/ECF system will allow multiple attachments to any pleading/document to be filed electronically.
- (4) Administrative records exceeding the allowable document size may not be filed electronically but must be filed conventionally and will not be scanned by the Clerk's Office. The party filing an administrative record must also file a Notice of Filing Paper Materials with the Clerk. The Notice must be in the form prescribed on the Court's website.

(h) Sealed Documents.

CM/ECF allows for the filing of sealed and ex-parte documents. Processes are under review and will be posted prior to November 20, 2006.

9. DOCKET ENTRIES AND CORRECTIONS OF DOCKET ENTRIES

- (a) Participant Designates Docket Entry.** A Participant who electronically files a pleading or other document is responsible for designating a docket entry title for the document by using one of the docket event categories prescribed by the Court.
- (b) Participant Withdrawing/Re-Filing To Correct Mistakes Is Not Permitted.** The CM/ECF system will not permit a Participant to withdraw an incorrectly filed document or to change the form of an incorrect docket entry once the transaction has been accepted. Participants must not attempt to re-file a document incorrectly filed or docketed.
- (c) Only Clerk's Staff Authorized To Correct Docket Entry Mistakes.** Once a pleading/document is electronically filed and becomes part of the electronic record, corrections to the docket may be made only by the Clerk's Office staff. If a Participant notifies the Clerk's Office that a document was filed or docketed in error, or if the Court determines the same, the Clerk may enter a text entry, notifying all parties of record of the error and the correction.

10. COURT-ISSUED DOCUMENTS & "TEXT-ONLY" ENTRIES.

- (a) Court Files Electronically.** All orders, decrees, judgments, and proceedings of the Court will be filed in accordance with these procedures, which will constitute entry on the docket kept by the Clerk.
- (b) Court Signatures On Court Electronically-Filed Documents.** All signed orders will be filed electronically by the Court. Any order or other Court-issued document filed electronically without the original signature of a Judge or Clerk has the same force and effect as if the Judge or Clerk had signed a paper copy of the order and it had been

entered on the docket in a conventional manner.

- (c) **Notice To Non-Participants Of Court Electronically-Filed Documents.** When mailing paper copies of an electronically-filed order to a party who is not a Participant, the Clerk's Office will include the NEF to provide the non-participant with the proof of filing.
- (d) **"Text-Only" Entries.**
- (1) Disposition of routine matters such as notices of hearing or orders on unopposed or routine motions may be entered on the docket by using a text-only entry. **THESE TEXT-ONLY ENTRIES HAVE THE SAME FORCE AND EFFECT AS IF A SIGNED PAPER DOCUMENT OR AN E-FILED DOCUMENT HAD BEEN ENTERED ON THE DOCKET**
 - (2) If a "text-only" entry is made, no PDF document will be created or associated with the entry, and the text of the entry constitutes the Court's only action on the matter. Each text-only docket entry will be clearly labeled to convey that it is a text-only entry and that no documents are attached.
 - (3) The CM/ECF system will generate a "NEF" for "text-only" entries, as described previously in these procedures.

11. PROPOSED ORDERS

- (a) **Proposed Orders MUST NOT Be E-Filed Of Record Or Submitted In Paper Form To Chambers Unless Otherwise Ordered.** Proposed orders **SHOULD NOT** be filed or submitted to the Clerk or Judges' chambers unless otherwise required by the Judge.
- (b) **Format and Procedure For Submitting Proposed Orders Required By The Judge.**
- (1) Proposed orders will rarely be required to be submitted because text-only docket entries will be used by the assigned judge or the Clerk's office for most routine or unopposed motions. When proposed orders are required by the assigned judge, the proposed orders are submitted as an attachment to an e-mail to the Judge who is to sign the order.
 - (2) E-mail addresses and chambers-specific requirements are available on the Court's website at www.nmcourt.fed.us.
 - (3) The subject line of the e-mail must include the following: (1) the case number, (2) The Judge's initials, (3) the docket number of the motion filed electronically which is the subject of the proposed document, and (4) a very brief description of the proposed document (**Example: 06cv01234, MV, 10, Order Dismissing**). The document itself should be similarly named to convey the same information (**Example: 06cv01234_MV_10_Order_Dismissing.wpd**).

12. CM/ECF REPLICATION/FAILOVER SERVICES

A variety of conditions may result in failure or inaccessibility of the court's CM/ECF system, e.g. hardware failures, power failures or communication failures. Processes are under review and will be posted prior to November 20, 2006.

Dated this 28th of August
On behalf of the Court,

Matthew J. Dykman
Clerk of Court