

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA



ADMINISTRATIVE PROCEDURES FOR
ELECTRONIC CASE FILING

(CM/ECF Version 6.1)

April 2018

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I. Introduction

The United States District Court for the Northern District of West Virginia uses the CM/ECF case management system for accepting most court documents for filing, for entering orders from the Court, and for otherwise managing the Court's case docket. As of July 5, 2005, this Court required mandatory attorney filings in CM/ECF.

These electronic case filing policies and procedures are issued pursuant to Local Rules 5.01(a) and 5.03(b) and apply to all cases subject to electronic filing. To the extent these procedures conflict with the Court's Local Rules, the Local Rules take precedence. The Clerk or any judge of this Court may deviate from these Administrative Procedures for Electronic Case Filing in specific cases without prior notice, if appropriate in the exercise of discretion considering the need for the just, speedy, and inexpensive determination of matters before the Court.

II. Definitions

1. **"Case Management/Electronic Filing System"** (CM/ECF) refers to the Court's automated system that receives documents filed in electronic form. The program was developed for the Federal Judiciary by the Administrative Office of the United States Courts. It is also referred to as the "Electronic Case Filing System" (ECF).
2. **"CM/ECF User"** is an individual who has a login and password for CM/ECF and may file cases through the CM/ECF filing system.
3. **"Conventional Manner"** is the method used to file documents that cannot or should not be filed electronically via CM/ECF and must be filed by other means (e.g., filing in paper form, in person or by mail). Conventionally filed documents are hard copies containing an original, handwritten, wet signature of the filing attorney or pro se party.
4. **"Documents"** shall include all pleadings, motions, memoranda, briefs, exhibits, affidavits, declarations, orders, notices, transcripts of depositions actually used in support of motions or at trial, transcripts of proceedings required to be filed, and any other Court filings.
5. **"Electronic Filing"** means uploading a PDF document directly from the filing user's computer using CM/ECF to file the document in the Court's case file. **SENDING A DOCUMENT OR PLEADING TO THE COURT VIA EMAIL DOES NOT CONSTITUTE "ELECTRONIC FILING"**.

6. **“Electronic Signature”** is the CM/ECF login and password used to electronically file a document and constitutes the CM/ECF user’s electronic signature for all purposes.
7. **“Filer”** is an individual who presents documents, either electronically or in paper, to the Court for filing.
8. **“Judge”** is a United States District Judge, Bankruptcy Judge or Magistrate Judge for the Northern District of West Virginia.
9. **“Non-CM/ECF User”** is an individual who does not use CM/ECF.
10. **“Notice of Electronic Filing”** (NEF) is a notice automatically generated by the Electronic Filing System at the time a document is filed with the system, setting forth the time of filing, the date the document is entered on the docket, the name of the party and attorney filing the document, the type of document, the text of the docket entry, the name of the party or attorney receiving notice and an electronic link (hyperlink) to the filed document.
11. **“PACER”** (Public Access to Court Electronic Records) is an automated system that allows an individual to view, print and download court docket information over the Internet.
12. **“PDF”** (Portable Document Format) is a document file format that provides an electronic image of text or text and graphics that looks like a printed document and can be viewed, printed, and electronically transmitted. Documents created with an electronic device or computer software application, or a paper document which has been scanned, must be converted to PDF before filing electronically with the Court. Converted files contain the extension “pdf”.
13. **“Sealed Document”** is defined as a document or motion filed pursuant to (1) a protective order, (2) an order granting leave to file the sealed document or motion, in conjunction with a motion for leave to file under seal or a previously filed redacted document, or (3) included within a category of documents considered sealed under a federal statute or federal rule of procedure, local rule, or standing order of this Court. **The sealed document or motion is not available electronically or by any other means to the parties, attorneys or the public.**
14. **“Technical Failure”** is defined as a malfunction of the Court’s hardware, software, and/or telecommunications facility, which results in the inability of a CM/ECF User to submit a document electronically. Technical failure does not include the malfunctioning of a user’s equipment or internet connection.
15. **“User”** is anyone (including an attorney, the Court and the Clerk of Court) who is authorized to use the CM/ECF system in the Northern District of West Virginia.

III. Scope of Electronic Filing

- A. Subject to the exceptions set forth herein, all documents submitted for filing in this district in criminal and civil cases shall be filed electronically using the Case Management Electronic Case Filing system (CM/ECF) or, if filed conventionally¹, will be scanned and uploaded to CM/ECF, unless otherwise permitted by these Administrative Procedures or otherwise authorized by the assigned judge or, in the case of a technical failure, the Clerk of Court.
- B. The official court record for all cases filed in the United States District Court for the Northern District of West Virginia after July 5, 2005, will be the electronic file maintained on the Court's servers, together with any conventionally filed attachments and exhibits, filed in accordance with these procedures.
- C. The Court will not maintain a paper court file in any civil or criminal case commenced after July 5, 2005, except as otherwise provided herein. The Court will not maintain a paper copy of the original document except as otherwise provided in these Administrative Procedures, or as otherwise required by law.
- D. Every member of the bar of this Court must request a user login and password from the Clerk's Office and is required to submit documents electronically.
- E. Notwithstanding the requirement contained in paragraph III(D) above, an attorney may, upon showing of good cause, be permitted by the assigned judge to submit documents conventionally. The assigned judge may withdraw that permission at any time during the pendency of a case and require the attorney to submit documents electronically using the Court's CM/ECF system.
- F. The Clerk's Office may discard any paper document after it has been uploaded to the CM/ECF system.
- G. All documents filed by electronic means must comply with the technical standards, if any, established by the Judicial Conference of the United States or by this Court.
- H. The Clerk's Office or any judge of this Court may deviate from these procedures in specific cases, without prior notice, if deemed appropriate in the exercise of discretion, considering the need for the just, speedy and inexpensive determination of matters pending before the Court.
- I. The Court may amend these Administrative Procedures for Electronic Case Filing at any time without prior notice. Updates to these Administrative

¹ As used in these Administrative Procedures, a "conventionally" filed or submitted document or pleading is one presented to the court or a party in paper or other non-electronic, tangible format.

Procedures will be posted to the Court's website at www.wvnd.uscourts.gov

IV. Exceptions to Mandatory Electronic Filing

Filers shall file the following documents in paper with the Clerk's Office which will scan into CM/ECF as appropriate:

- A. The charging document in a criminal case, such as the complaint, indictment, or an information, as well as the grand jury docket sheet or criminal cover sheet.
- B. Affidavits for search and arrest warrants and related papers.
- C. Fed. R. Crim. P. 20 and Fed. R. Crim. P. 40 papers received from another Court.

V. Registration and Passwords

- A. Unless exempted by order of the court,² each attorney admitted to practice in the Northern District of West Virginia, including those admitted *pro hac vice*,³ who is in good standing shall register for one CM/ECF system login identification and password. The login and password permit the attorney to participate in the electronic submission and retrieval of pleadings and other papers filed with the Court. There is no charge for registering and using the electronic filing system.
- B. Each attorney must complete and sign an Attorney ECF Registration Form, a copy of which is on the Court's website at <http://www.wvnd.uscourts.gov>.
- C. All signed, original attorney registration forms must be emailed to ECFRegistration@wvnd.uscourts.gov, mailed to the United States District Court, Office of the Clerk, Attention: CM/ECF Administrator, P.O. Box 2857, Clarksburg, WV 26302, faxed to 304-623-4551, or delivered to any divisional Clerk's Office.
- D. All newly admitted members of our bar who provide the CM/ECF registration form to the Clerk's Office are automatically issued local CM/ECF credentials following their admission.
- E. The Clerk's Office will e-mail login identification and password information to the attorney.

² If filing electronically would create an undue hardship for an attorney, he/she may move for permission to file documents conventionally. The motion must be in writing and must contain a detailed explanation of the reason(s) for the request.

³ *Pro Hac Vice* attorneys will have read-only access to CM/ECF. The local attorney must file all documents pursuant to LR Gen P 83.02 (Appendix 1 to these Administrative Procedures for Electronic Case Filing).

- F. Unrepresented incarcerated parties will not be permitted to submit documents or pleadings electronically.
- G. Once the registration is complete, a filing party may not withdraw from participation in the CM/ECF system except by order of the Court.
- H. If a CM/ECF user believes that the security of an existing password has been compromised and that a threat to the CM/ECF system exists, the user must notify the Clerk's Office and change his or her password immediately. In addition, a CM/ECF user may change his/her password as he/she deems appropriate.
- I. A CM/ECF user whose e-mail address, mailing address, telephone or fax number has changed from that of the original registration form must immediately file a notice of a change of address with the Clerk's Office and serve a copy of the notice on all parties in pending litigation with the CM/ECF user.
- J. No attorney will knowingly permit or cause to permit his or her login identification and password to be utilized by anyone other than an authorized employee of his or her office.
- K. Each registered attorney is responsible for all filings submitted with his or her login identification and password.
- L. The login and password of an attorney constitutes his/her signature on the document being filed. The login and password of the filing attorney must match the attorney whose signature block appears on the document filed.
- M. Registration constitutes the CM/ECF user's consent to service of all documents by electronic means as provided by these procedures in accordance with Fed. R. Civ. P. 5(b)(2)(E) and Fed. R. Crim. P. 49(e).
- N. CM/ECF credentials will not be issued to paralegals, secretaries, or other paraprofessionals.
- O. Government Attorneys will be issued logins/passwords when requested and pursuant to LR Gen P 83.01. Upon transfer to different government agencies, Users must notify the Attorney Admissions Clerk, Debbie Kinsey, by calling 304-623-7155, or by email at debbie_kinsey@wvnd.uscourts.gov and update their U.S. mail and email addresses in order for their login/passwords to remain valid. Users who leave government agencies and do not transfer to other government agencies must notify the Attorney Admissions Clerk so that their login/passwords may be deactivated.
- P. Government agencies must also notify the Attorney Admissions Clerk when a CM/ECF user leaves their agency. A notice of substitution of counsel must be filed in order for the government agency to receive future CM/ECF notices

regarding case activity associated with a CM/ECF user who is no longer with their agency.

VI. PACER and CM/ECF Accounts

A. Public Access to Court Electronic Records (PACER)

PACER is a fee for use service offered by the Administrative Office of the United States Courts. It offers electronic access to records of most federal District, Appellate, and Bankruptcy Courts. The types of records available electronically will vary from court to court. In almost all jurisdictions docket sheets may be accessed. Most documents electronically filed in civil cases may be viewed over the Internet using PACER.

When a PACER user accesses a docket sheet or other document over the Internet using PACER, there is a fee per page. This fee applies regardless of whether the user simply views the document or downloads and saves it. There is a maximum charge per document.

When a PACER user accesses a document for the first time via the Notice of Electronic Filing (NEF), the user will not incur any fee for accessing the newly filed document, but will incur a fee when accessing any hyperlinked document(s) from within the original document. When a PACER user accesses a document after the first look, or accesses it from a docket sheet, the user will be charged for the original document and any documents displayed when using the hyperlink. If the documents filed in the same transaction contain hyperlinks to each other, the free look will be available from the document number hyperlink displayed on the NEF document submenu, not from the hyperlinks in the documents themselves.

If a PACER user does not have his/her PACER login already linked to the user's CM/ECF login, the user will be prompted for the PACER login for the first document the user tries to view. For more information on how to register for a PACER account go to www.pacer.gov.

B. CM/ECF Accounts and PACER Accounts are Different

A CM/ECF account allows the user to file documents electronically and provides an email notification of docket activity in any cases where the user is counsel of record or has signed up for electronic notification. It does not allow the user to view docket sheets or court documents except through the one-time link in the email notification. Only attorneys may have CM/ECF accounts.

A PACER account allows the user to view docket sheets and documents which have been filed electronically. A PACER user cannot file any documents using a PACER account. Anyone can sign up for a PACER account.

When a user goes to this Court's electronic filing site, the user will enter either his/her CM/ECF login and password or his/her PACER login and password. Because the accounts allow the user to do different things, the options on the main menu bar are different. If the user is logged in with his/her CM/ECF login and password and clicks an option that requires a PACER account such as viewing a docket sheet, the system will prompt the user to enter his/her PACER login and password.

Some documents have added security which allows them to be viewed only by case participants. In this situation, when the NEF is received the recipient must login using the CM/ECF password then the PACER login to view the document. This is a security feature so that PACER recognizes the user as a case participant.

VII. Electronic Filing of Documents

A. General Procedures

1. The electronic filing of a document in CM/ECF, together with the transmission of a Notice of Electronic Filing (NEF) from CM/ECF, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the Local Rules of this Court, and constitutes entry of the document on the docket kept by the Clerk of Court under Rules 58 and 70 of the Federal Rules of Civil Procedure and Rules 49 and 55 of the Federal Rules of Criminal Procedure. **E-mailing or faxing a document to the Clerk's Office or the assigned judge does not constitute "filing" of the document.**
2. Unless otherwise ordered, a document shall be timely filed if it is electronically filed by midnight, E.S.T., as indicated on the NEF.
3. The date and time shown on the NEF shall be the official time and date of the filing.
4. In civil and criminal cases, all motions, applications, briefs, memoranda of law, deposition transcripts, transcripts of proceedings, or other documents in a criminal case which constitute the case file must be filed electronically in CM/ECF except as otherwise provided by these Administrative Procedures.

VIII. Document Requirements and Formatting

A PDF document allows anyone to open a converted document across a broad range of hardware and software, with layout, format, links, and images intact. PDF is the only document format acceptable for electronic filing in CM/ECF.

A. Converting a Document to PDF

Before filing in CM/ECF, a user must convert the document(s) to PDF format. The system will neither accept documents in WordPerfect nor Word format, and the system will not automatically convert such documents to PDF.

1. Converting a Word Document

a) To convert to PDF format within Word 2016/Word 365:

- i.) Click on **File** in the toolbar and select **Save As**.
- ii.) The user should navigate to where he/she would like to save the document.
- iii.) From the upper right portion of the screen, enter the name of the file.
- iv.) Using the drop-down list under the file name, select **PDF (*.pdf)**. Click the **Save** button to the right.

b) To convert to PDF format within Word 2007 through Word 2013:

- i.) Click the **Office button** (the round button in the upper, left corner of the screen)
- ii.) Select **Save As**.
- iii.) Select **Adobe PDF**.
- iv.) The **Save Adobe PDF File As** window opens. Type the name of the file and click **Save**.

2. Converting a WordPerfect Document

- a) Click **FILE** on the toolbar.
- b) Select **Publish to** and then **PDF** or select **Publish to PDF** (the selection depends on the version of WordPerfect the user is using).
- c) The user then saves the PDF document on his/her computer.

B. Document Margins

To ensure all information is legible, please allow a one-inch top margin of white space on all documents, including letterhead.

C. Lengthy Documents

Extremely large documents, especially those that are scanned, may exceed the ECF system's per document capacity (35 megabytes⁴). If the user has a very large document (usually well over 100⁵ pages in length), the user must split the document into separate segments of 35 megabytes or smaller. The user should title each segment appropriately, e.g., Continuation, pp 100-199, Continuation, pp 200-end.

D. Scanned Documents

A document that exists only in paper format should be scanned.

1. Scanner Setting:

For scanning documents for CM/ECF filing, set the scanner at 300dpi or higher.

2. Attachments:

Each document should be a separate PDF. Exhibits should be filed as attachments to the documents to which they relate.

3. Color documents:

Do not scan text documents in color if color is not essential to the presentation of the material. However, filers may file documents scanned in color if color is essential to the document, such as color photographs or color graphs.

4. Legibility:

The filer is responsible for the legibility of scanned documents.

⁴ To check the size of a document, hold the mouse pointer over the document's title in the Adobe file folder. A small menu box will pop up containing the type and size of the document. An alternative is to open the document and go to File, Document Properties, and Description. The size is noted under the PDF information.

⁵ The 100 page limit is flexible. Depending on the contents of the document, type of scanner and software used, the user may be able to electronically file lengthier documents. Many documents in excess of 100 pages will be accepted by the ECF system. If the user's document exceeds 35 megabytes, the system will display an error message.

E. Attachments⁶ and Exhibits

Filers must submit, in electronic form, all documents referenced as attachments, unless the Court expressly permits conventional filing. Attach the documents via the “Attachments to Document” function in CM/ECF. Users should submit only those excerpts of the referenced documents that are germane to the matter under consideration, and clearly and prominently identify excerpted material. A user who files excerpts of documents as attachments under this section does so without prejudice to his/her right to timely file additional excerpts or the complete document.

Users should not attach as an exhibit any document already on file with the Court in that respective case, but shall merely refer to that document by docket entry number.

PLEASE NOTE: When filing an electronic exhibit such as a DVD, video tape, thumb drive or other electronic exhibit, please deliver two (2) copies of the electronic exhibit to the Clerk’s Office, one for the official court file and one for the judge.

F. Judge’s Working Copy

For documents filed within the page limits set by the Local Rules, no paper copies are necessary. Upon obtaining permission to exceed the respective page limit, or upon filing of an attachment which exceeds 20 pages, counsel shall provide an indexed, tabbed paper copy of the entire document to the assigned judge and magistrate judge within three (3) days of electronic filing, but not less than two (2) working days before any hearing on such filing.⁷ All working copies are to be printed off from CM/ECF so that the docket entry number and page numbers appear and should also be clearly labeled “**Judge’s Working Copy**” or “**Magistrate Judge’s Working Copy**” when provided to the Court.

Counsel must submit both the attachments and the filing they support (i.e., if the attachment(s) support a motion, please provide the motion as well as the attachments).

G. Document Retention

The filer shall retain all documents containing original signatures of anyone other than the filer for a period of not less than sixty (60) days after all dates for appellate review have expired.

⁶ “Attachments” shall include attachments, exhibits, supplements, etc.

⁷ LR Gen P 5.01(b)

IX. Commencement of a Civil Action

- A. A CM/ECF user may provide a complaint, notice of removal and any other initiating document by logging into the ECF system, selecting **Civil** on the main menu bar, and filing his/her document(s) into the electronic intake case. (See instructions www.wvnd.uscourts.gov How to Submit a Complaint/Petition Electronically and How to Submit a NOR Electronically).
- B. The date the CM/ECF user completes the transaction entering all the initiating documents in the ECF system, as displayed on the resulting Notice of Electronic Filing (NEF), shall constitute the official filing date of the civil action. CM/ECF users will not associate themselves as counsel in the electronic intake case. All documents associated with a new case will be filed as attachments to the filing entry in the case.

CM/ECF users are required to pay the filing fee through Pay.gov during the filing process or arrange payment of the filing fee with the Clerk's Office immediately following filing, except for:

- Cases in which the plaintiff seeks to proceed without the prepayment of fees, thus the initiating documents must include a motion or application to proceed without prepayment of fees and a proposed order granting the motion; and
- Cases initiated by the United States of America or any of its agencies.

C. Pay.gov Instructions:

Attorneys may pay certain fees online with a credit card or via bank account debit. The fees that may be paid online are:

- Filing fees for a new case
- Appeal filing fees

When filing the related document in CM/ECF, a screen labeled System Message will appear and ask the user to input payment information. This is the Pay.gov website.

Once the user reaches this site, it is strongly recommended to not click the **Back** button on the browser.

Pay.gov allows for payment via credit card. When paying by credit card Visa, MasterCard, American Express, Diner's Club or Discover may be used.

D. Temporary Case

Case initiating documents filed through CM/ECF are placed into a temporary case for review by the Clerk's Office staff prior to being assigned a permanent

case number and judge. A NEF will be sent to the filing CM/ECF users indicating the permanent case number once the case has been opened by the Court. CM/ECF users must only file the initiating documents in the temporary case. Subsequent and/or additional pleadings are to be filed in the permanent case once the case number is received from the Clerk's Office via the NEF.

E. Original Complaint or Petition

When filing an original complaint, the CM/ECF user will select the event "COMPLAINT - Electronic Intake" from the Civil "Complaints and Other Initiating Documents" category. Documents to be filed as attachments to the complaint include the civil cover sheet, the proposed summons form(s) and, where appropriate, a motion, affidavit and proposed order allowing the plaintiff to proceed without the prepayment of fees.

F. Notice of Removal

When filing a notice of removal, the CM/ECF user will select the event "NOTICE OF REMOVAL – Electronic Intake" from the Civil "Complaints and Other Initiating Documents" category. Documents to be attached to the notice of removal include the civil cover sheet, and where appropriate, the state court docket sheet and state court documents. If the removing party seeks to proceed without prepayment of fees, attachments should also include a motion, affidavit and proposed order allowing the plaintiff to proceed without the prepayment of fees.

G. Clerk's Office Procedure for New Cases

After a CM/ECF user has completed the transaction for opening a new civil case, the Clerk's Office will complete the full case opening process, including assignment of a civil action number, assignment to the judge, and uploading the case documents correctly into the ECF system. If applicable, the Clerk's Office will print and issue the summons for service by counsel, following receipt and processing of the filing fee.

NOTE: Pursuant to Rule 3 of the Federal Rules of Civil Procedure, the statute of limitations is not tolled by this procedure UNTIL the complaint, petition, notice of removal or other case initiating document is FILED with this Court.

The Clerk of Court may decline to process a filing until receiving the required filing fee. Failure to timely submit filing fees may result in an Order to Show Cause requiring appearance before the Chief Judge or other designated judicial officer.

X. Service of Process

A. Summons

A summons must be signed and have the Court's raised seal affixed by the Clerk's Office. Pursuant to Fed. R. Civ. P. 4, the plaintiff or the plaintiff's attorney must prepare the summons and provide it to the Clerk's Office during the electronic filing process or in paper form. The Clerk's Office will sign and affix the Court seal to the completed summons and return it to counsel for the plaintiff for service of process. Unless otherwise ordered, it is the responsibility of the parties, not the Clerk's Office, to serve the summons.

B. Summons Forms

Summons forms can be found at www.wvnd.uscourts.gov/forms

C. All Other Documents

Upon consent of the person served, service of all other documents may be accomplished electronically. Use of the CM/ECF login and password constitute consent on the part of the CM/ECF user for electronic service via ECF.

D. Service of Other Electronically Filed Documents

When a document is filed electronically, CM/ECF sends a NEF to all electronic filers signed up to receive NEFs for that particular case. Documents are deemed filed at the time and date stated on the NEF. The emailing of the NEF directly from CM/ECF is equivalent to service of the document.

E. Certificate of Service

A certificate of service is required for all filings, even electronic. Filers shall attach the certificate to the filing and state the manner in which service was accomplished on each party. A sample certificate of service is attached as Appendix 2 and is available at www.wvnd.uscourts.gov/forms.

F. Service Upon Non-CM/ECF Users

Parties not using CM/ECF are entitled to paper copies of all documents. Accordingly, the filer must provide all non-CM/ECF users with the document according to the Federal Rules of Civil and Criminal Procedure.

G. Time to Respond Under Electronic Service

Pursuant to Fed. R. Civ. P. 6(d) and Fed. R. Crim. P. 45(c), unlike service by mail, service via electronic means does not provide an additional three (3) days to the prescribed time to respond.

H. Service of Sealed Filings

Unless otherwise provided for by statute, federal rule or this Court's Local Rules including LR Gen. P. 6.01, a filer may file sealed documents in CM/ECF only upon permission of the Court. The filer must effect service of sealed documents by any conventional method.

XI. Pro Se Cases

- A. Non-prisoner pro se parties may file electronically only upon express permission of the Court. If, during the course of the action, the pro se party retains an attorney who appears on the party's behalf, the Clerk shall terminate the party's CM/ECF credentials.
- B. Unless authorized to file electronically by the judge assigned as provided in these Procedures, pro se filers will file paper originals in the conventional manner.
- C. Incarcerated pro se parties are not permitted to file electronically. They must file in the conventional manner.
- D. Electronic filers in pro se cases must conventionally serve copies on all pro se parties who are not CM/ECF users.

XII. Social Security Cases

A. Electronic Filing

Absent a showing of good cause, litigants shall file and notice all documents in social security appeal cases electronically.

B. Transcripts of Administrative Proceedings

The United States Attorney shall file social security transcripts electronically in CM/ECF. The United States Attorney shall provide a paper copy of the social security transcript to the respective magistrate judge, who shall provide it to the district judge upon request. The Clerk's Office will not make copies of social security transcripts.

C. Internet Access to Social Security Cases

Unless otherwise ordered by the Court, in an action for benefits under the Social Security Act, access to the electronic file is authorized as follows:

1. The parties and their attorneys may have remote electronic access to any part of the case file, including the administrative record; and
2. Any person may have electronic access whether remotely or at the public terminal at the courthouse to:
 - a) The docket maintained by the Court; and
 - b) An opinion, order, judgment or other disposition of the Court, but not any other part of the case file or administrative record.

XIII. Bankruptcy Cases

A. Appeals, Motions for Leave to Appeal, and Motions for Withdrawal of Reference

Notices of Appeal, Motions for Leave to Appeal, and Motions for Withdrawal of Reference should be filed in the Bankruptcy Court in the format used by that Court for the particular case involved.

B. Designation of Record

The designation of record should be filed in the Bankruptcy Court in the format being used by that Court for the particular case involved. The Bankruptcy Court will transmit all designated items to the District Court and the parties are not required to submit additional copies unless requested by the Bankruptcy Court.

Electronic documents in the bankruptcy case will be transmitted electronically from the Bankruptcy Court to the District Court. If the Bankruptcy Court case consists of paper documents, the Bankruptcy Court will convert the paper case documents to electronic format before transmitting to the District Court. However, transcripts, bound materials, and exhibits in paper format may be transmitted in paper from Bankruptcy Court to the District Court.

C. Filings After the Case is Transmitted to District Court

Unless the case is exempt from electronic filing by order of the presiding judge, any filing made directly to the District Court should be in electronic format and in accordance with this Court's Administrative Procedures for Electronic Case Filing.

Once a District Court case using electronic filing has been opened, any documents which by federal or local rule are required to be filed in the Bankruptcy Court and then transmitted to the District Court, are to be filed

in both Courts by the parties. The documents must be electronically filed in the District Court and filed in the Bankruptcy Court in whatever format is being utilized for the bankruptcy case.

XIV. Motions Practice

A. Submit Motions and Responses Separately:

The user should always file motions and responses as separate docket entries using two separate events in CM/ECF. For example, never file a cross-motion for summary judgment with a response to a motion to a summary judgment. It is critical that the cross-motion be filed separately so that it will appear on the Court's Pending Motions Report and can be properly linked to any subsequent responses, replies, notices and orders.

B. Multiple Motions:

1. Best Practice:

The best practice to follow when filing multiple motions is to file each motion as a separate document. It is also best to file the memorandum in support as an attachment, instead of with the motion and memorandum as one document.

2. Alternate Practice:

If the user must file a single document containing more than one motion, he/she must choose multiple reliefs on the motions menu in CM/ECF (e.g., Motion for Bill of Particulars and Motion for Brady Materials). Choose multiple reliefs by holding the control button while clicking on the individual reliefs sought. If the user has multiple "miscellaneous" motions, each must be filed separately. If a particular relief is not listed, choose Miscellaneous Relief. The Court must account statistically and administratively for each motion filed, which cannot be accomplished if several motions are combined into one document that is filed incorrectly.

C. Filing Attachments and Exhibits in CM/ECF

When filing an exhibit in support of a motion, the user should make it an attachment to the memorandum in support of the motion, not an attachment to the motion. Do not attach as an exhibit any document already on file with the Court in that case. Instead, merely refer to that document by docket entry number. See section VIII (E) for more discussion on exhibits.

XV. Hyperlinks

Electronically filed documents may contain the following types of hyperlinks:

- A. Hyperlinks to other portions of the same document; and
- B. Hyperlinks to an internet site that contains a source document for citation.

Hyperlinks to cited authority may not replace standard citation format. Complete citations must be included in the text of the filed document. Neither a hyperlink, nor any site to which it refers, shall be considered part of the record. Hyperlinks are simply convenient mechanisms for accessing material cited in a filed document. The Court accepts no responsibility for the availability or functionality of any hyperlink.

XVI. Proposed and/or Amended Documents

- A. Whenever a party files a motion requesting leave to file an amended filing the original of the proposed amended document must accompany the motion.⁸ Attach the proposed amended document to the underlying motion by selecting Attachments to Document on the Browse screen.
- B. Please **do not** include the word “Proposed” in the title of any proposed documents. Describe them as “Proposed” in the description box in CM/ECF, but do not put “Proposed” on the document itself. To accept a document on which “Proposed” is typed, the Court must either cross “Proposed” out, block it in adobe or retype the entire document.
- C. The user should file proposed Jury Instructions and Voir Dire Questions electronically. They are located under Trial Documents in CM/ECF. Counsel must submit copies of the proposed jury instructions, verdict forms, special interrogatories and voir dire questions to the presiding judge in accordance with instructions set forth in his/her respective Scheduling Order.⁹

XVII. Sealed Documents, Sealed Cases, Documents Presented for In Camera Review, and Documents Filed with the Court

- A. General:

⁸ See LR Civ P 15.01

⁹ Parties not filing electronically must provide paper copies of the respective documents.

Although pleadings filed in this Court are generally filed unsealed, when necessary, the Court may determine that a case or document in a case be sealed.

Pursuant to Judicial Conference policy the following documents are not to be included in the public case file and will not be made available to the public at the courthouse or via remote electronic access:

- 1) unexecuted summonses or warrants of any kind (e.g. search warrants, arrest warrants);
- 2) pretrial bail or presentence investigation reports;
- 3) statement of reasons in the judgment of conviction;
- 4) juvenile records;
- 5) documents containing identifying information about jurors or potential jurors;
- 6) financial affidavits filed in seeking representation pursuant to the CJA;
- 7) *ex parte* requests for authorization of investigative, expert or other services pursuant to the CJA;
- 8) motions for downward departure for substantial assistance;
- 9) plea agreements indicating cooperation; and
- 10) victim statements.

In addition, pursuant to district policy the following documents shall also not be included in the public case file and will not be made available to the public at the courthouse or via remote electronic access:

- 1) unredacted Indictments;
- 2) Rule 35 motions;
- 3) sentencing memoranda and responses thereto;
- 4) Prisoner Trust Fund Account Statements;
- 5) motions to proceed *in forma pauperis*;
- 6) psychiatric reports;
- 7) mediation statements;

- 8) mediator reports; and
- 9) Personal Identification Attachment to the revocation judgment.

A case or document filed under seal in CM/ECF will not be available to the public through the public terminals in the Clerk's Office or through a CM/ECF login. The case or document will become available only if the Court orders the case or document unsealed.

B. Filing Sealed Documents in Public (Unsealed) Cases:

Motion to Seal: To file a document under seal, unless the document is one of the automatically sealed documents referenced in XVII (A) of these Procedures, a party must first file a motion for leave of the Court to file under seal. When electronically filed using the correct event, *Motion to Seal*, sensitive information can be attached, as this event is automatically sealed in CM/ECF. In the alternative, along with the motion, a party may present the sensitive information in a sealed envelope marked "sealed" to the Clerk's Office along with the Motion to Seal. If the Court grants the Motion to Seal, the judge will electronically enter the order authorizing the filing of the documents in the appropriate manner (i.e., under seal, filed with the Court, etc.). If the Court denies the motion, the Court will issue an order directing the parties to file the documents electronically.

C. Service of Sealed Documents

Users/Filers must effect service of process of sealed documents through/by conventional means.

D. Response/Reply to Sealed Document

In some instances, parties may not have access to electronically file responses or replies to sealed documents. In these instances the filer must file the response or reply by conventional means.

E. E-Government Act

1. **Privacy Data:** Filers shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all documents filed with the Court whether filed electronically or by conventional means:
 - a. **Social Security Numbers:** If an individual's Social Security number must be included in a filing, use only the last four digits of that number.
 - b. **Names of Minor Children:** If the involvement of a minor child must be mentioned, use only the child's initials.

- c. **Dates of Birth:** If an individual's date of birth must be included in a filing, use only the year.
- d. **Financial Account Numbers:** If financial account numbers are relevant, use only the last four digits of these numbers.
- e. **Home Address in Criminal Cases:** If a home address must be included in a document to be filed in a criminal case, include only the city and state.

2. Redaction Policy:

A party wishing to file a document containing any of the personal data identifiers listed above must:

- a. File a redacted, unsealed version of the document along with a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s) used in its (their) place in the filing. All references in the case to the redacted identifiers included in the reference list must refer to the corresponding complete personal identifier. The reference list must be filed under seal, and may be amended as a right, or
- b. With approval of the Court, file an unredacted version of the document under seal. The Court may, however, still require the party to file the redacted copy for the public file. The unredacted version of the document or the reference list shall remain sealed and retained by the Court as part of the record.

The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk will not review each filing for compliance.

Indictments and Informations: Counsel shall redact addresses from all indictments and informations except to the extent that an address is necessary to provide the defendant notice that a crime has been committed at a specific location.

XVIII. Orders

A. General:

The Court will electronically file all signed orders. Upon filing, CM/ECF will send a NEF to all users in that case.¹⁰ The Clerk's Office will send a paper copy of the

¹⁰ CM/ECF also sends the NEF to persons signed up to receive NEFs for that particular case. The NEF contains a list of case participants who received it electronically.

order to the non-CM/ECF users in the case. Any order signed electronically has the same force and effect as if the judge had affixed his/her signature to a paper order docketed conventionally.

B. Text Only (Paperless) Orders:

The Court may enter orders by a text only docket entry with no PDF document. The text only entry shall constitute the Court's Order on the matter, and will carry the same force and effect as if the judge had affixed his/her signature to a paper order. The Clerk's Office will send a paper copy of the NEF to non-CM/ECF users in these instances.

C. Proposed Orders:

1. Parties may electronically submit proposed orders as attachments to motions, responses, replies, etc.
2. If a proposed order requires no motion, parties may electronically file using the Proposed Order event under Other Documents in CM/ECF.
3. Please **do not** include the word "Proposed" in the title of proposed orders. The user may describe them as proposed when browsing them into CM/ECF. Without "Proposed" typed on the order, if the Court accepts the order for entry, the Court can simply e-sign the order as submitted and enter it. If "Proposed" is typed on the order, the Court must either remove "Proposed" from the order, cross it out, block it in Adobe, or retype the entire order.
4. A user moving for the issuance of a writ, warrant, or summons should apprise the judge that a prompt ruling is critical, and attach the writ, warrant, or summons in the PDF format to the proposed order, if one is needed.

XIX. Correcting Docket Entries

Only the Clerk's Office can make corrections to erroneous docket entries. CM/ECF will not permit the filing party to change the document(s) or a docket entry filed in error. Errors may include posting the wrong PDF document to the docket entry, selecting the wrong document type from the menu, or entering the wrong case number.

If a user notices an error, **DO NOT RE-FILE THE DOCUMENT** unless directed to do so by the Clerk's Office. Instead, please notify the Clerk's Office of the error and obtain further direction. If appropriate, the Clerk will enter a notice of docket correction that will correct the mistake and specify the error.

No substitution or deletion of documents by the Clerk's Office staff is permissible. If an entry is stricken by the Judge, the Clerk's Office will restrict the document(s) to Court users only (Private) and add a remark noting that the entry was stricken.

XX. Technical Failures

A. Technical Failure of System

1. The Clerk's Office shall deem the Northern District of West Virginia CM/ECF site to be subject to technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of a period of time greater than one (1) hour after 10:00 o'clock a.m. that day. Known systems outages will be posted on the Court's website, if possible. In such instances, the CM/ECF user may file documents conventionally.
2. A CM/ECF user whose filing is made untimely as the result of a technical failure of the Court's CM/ECF site may seek appropriate relief from the Court. However, in some circumstances, the Court lacks the authority to grant an extension of time to file (e.g. Rule 69b of the Federal Rules of Civil Procedure).

B. Technical Failure of User's System

Problems with the CM/ECF user's system, such as phone line problems, problems with the user's Internet Service Provider, or hardware or software problems, **will not constitute a technical failure nor excuse an untimely filing**. A user who cannot file electronically because of a failure of the filer's system must contact the Clerk's Office and seek permission to file the document conventionally or by fax, if filing by fax is permissible under LR Gen P 5.05(a).¹¹

¹¹ If a filer is unable to file electronically because of technical failures, the filer must serve the opposing parties in the conventional manner.

APPENDIX I

LR Gen P 83.02. Visiting Attorneys.

(a) General: Whenever it shall appear that a person who has not been lawfully licensed and admitted to the practice of law in the State of West Virginia has been duly licensed to be admitted to practice before a court of record of general jurisdiction in any other state or country or in the District of Columbia, and when that person is in good standing as a member of the bar of such jurisdiction but has not been admitted to the bar of the United States District Court for the Northern District of West Virginia or the United States Bankruptcy Court for the Northern District of West Virginia, he or she may appear in a particular action, suit, proceeding or other matter in this Court:

(1) upon providing this Court a verified statement of application for *pro hac vice* admission listing:

- (i) the action, suit, proceeding or other matter that is the subject of the application;
- (ii) the name, address and telephone number of the registration or disciplinary agency of all state courts, the District of Columbia or of the country in which the applicant is admitted;
- (iii) the name and address of the member of the West Virginia State Bar who will be the responsible local attorney in the matter;
- (iv) all matters before West Virginia tribunals or bodies in which the applicant is or has been involved in the preceding twenty-four (24) months;
- (v) all matters before West Virginia tribunals or bodies in which any member of the applicant's firm, partnership, corporation or other

operating entity is or has been involved in the preceding twenty-four (24) months;

(vi) a representation by the applicant for each state, the District of Columbia or any other country where the applicant has been admitted to practice, stating that the applicant is in good standing with the bar of every such jurisdiction and that he or she has not been disciplined in any such jurisdiction within the preceding twenty-four (24) months; and

(vii) an agreement to comply with all laws, rules and regulations of West Virginia state and local governments, where applicable, including taxing authorities and any standard for *pro bono* civil and criminal indigent legal defense services;

(2) upon payment of a fee established by the Court and paid to the Clerk of Court for the United States District Court for the Northern District of West Virginia; and

(3) upon certification that the *pro hac vice* applicant has paid to the West Virginia State Bar the initial *pro hac vice* fee required by Rule 8.0 of the Rules of Admission for the West Virginia State Bar.

(b) Responsible Local Attorney: The applicant shall be associated with an active member in good standing of the state bar, having an office for the transaction of business within the State of West Virginia, who shall be a responsible local attorney in the action, suit, proceeding or other matter that is the subject of the application. Service of notices and other papers upon the responsible local attorney shall be binding upon the client and the applicant. The local attorney shall be required to sign all pleadings

and filings, affix his or her West Virginia State Bar identification number thereto and attend all hearings, trials or proceedings actually conducted before the judge, tribunal or other body of the State of West Virginia. for which the applicant has sought admission pro hac vice. The local attorney shall attend the taking of depositions and other actions that occur in the case that are not actually conducted before the judge, tribunal or other body of the State of West Virginia unless, upon motion of counsel, the presiding judge permits local counsel to appear by telephone or other electronic means, and shall further be a responsible attorney in all other aspects of the case. With prior permission of the Court, local counsel will not be required to attend routine court hearings or proceedings. To be a responsible local attorney, the local attorney must maintain an actual physical office equipped to conduct the practice of law in the State of West Virginia, which must be the primary office from which the responsible local attorney practices law on a daily basis. The responsible local attorney shall evidence his or her agreement to participate in the matter by his or her endorsement upon the verified statement of application or by written statement attached to the application.

(c) Exceptions to Payment of Visiting Attorney Fee:

- (1) Bankruptcy Cases: The visiting attorney fee will apply in every bankruptcy case in which the reference to the Bankruptcy Court has been withdrawn and in every appeal of a bankruptcy case to the District Court. Otherwise, the imposition of a visiting attorney fee in a bankruptcy case will be governed by the Local Rules for Bankruptcy Court.
- (2) Multidistrict Litigation Cases: Pursuant to the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, a visiting attorney fee will not be

charged in any case filed in this Court pursuant to a transfer under those Rules.

- (3) Miscellaneous Cases: A visiting attorney who files a miscellaneous case that does not require judicial action (e.g., one filed in order to obtain a subpoena) is exempt from paying the visiting attorney fee, from associating with a sponsoring attorney and from filing the statement of visiting attorney. A visiting attorney who files a miscellaneous case that does require judicial action (e.g., a motion to compel testimony at a deposition) must comply with LR Gen P 83.02(a).
- (4) Federal Government Attorneys: This section does not apply to properly licensed attorneys with the United States Department of Justice, those associated with federal executive branch agencies, and those appointed from outside the district pursuant to the Criminal Justice Act, 18 U.S.C. §3005A and §3006A.
- (5) Law Students: Law students who participate in a case in accordance with these Rules will not be charged a visiting attorney fee.

APPENDIX II

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA**

Plaintiff(s),

v.

Case No.

Defendant(s).

CERTIFICATE OF SERVICE

I hereby certify that on _____, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

I hereby certify that on _____, I have mailed, by United States Postal Service, the document to the following non-CM/ECF participants:

/s/ _____