

**UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA**



**ELECTRONIC CASE FILING
ADMINISTRATIVE POLICIES AND PROCEDURES MANUAL**

Revised: January 25, 2010

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UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NORTH CAROLINA

**ADMINISTRATIVE PROCEDURES GOVERNING
THE FILING AND SERVICE BY ELECTRONIC MEANS**

ELECTRONIC FILING and PDF DOCUMENTS

This court's Standing Order, 06-PLR-2, authorizes electronic filing in conjunction with Federal Rules of Civil Procedure 5(d)(3) and 83 and Federal Rules of Criminal Procedure 49 and 57. Pursuant to the Standing Order, the following procedures govern electronic filing in this district unless, due to extraordinary circumstances in a particular case, a judicial officer determines that these policies and procedures should be modified in the interest of justice. Electronic filing is the process of uploading a document from the registered user's computer, and then using the court's internet-based case management/electronic case filing ("CM/ECF") system to file the document in the court's electronic case file.

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ADMINISTRATIVE PROCEDURES

A. General Information

- (1) Unless otherwise permitted by these administrative procedures or unless otherwise authorized by the assigned judge, all documents submitted for filing in this district on or after October 1, 2005, no matter when a case was originally filed, shall be filed electronically using CM/ECF. **Effective June 1, 2006, attorneys shall be required to use CM/ECF to file all documents not otherwise exempted.** A document shall not be considered filed for purposes of the Federal Rules of Civil, Criminal or Appellate Procedure until the filing party receives a system generated Notice of Electronic Filing (NEF).
- (2) Any document electronically filed or converted by the United States District Court for the Eastern District of North Carolina (clerk's office) to electronic format shall be the official record of the court. As such, the clerk's office will not maintain a paper record of these documents.
- (3) All documents filed by electronic means must comply with technical standards, if any, established by the Judicial Conference of the United States or by this court.
- (4) To file documents in hard copy (manually), an attorney must file a motion for leave to file manually in a given case. An attorney who is not yet registered as a CM/ECF filer must seek leave of court from the clerk of court to file manually until the attorney has received CM/ECF training, or a log-in and password. Upon filing a motion, and for good cause shown, an attorney may obtain leave of court from the

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assigned presiding judge to file manually for the duration of an individual case. Even if the assigned judge initially grants an attorney permission to file documents manually, the assigned judge may withdraw that permission at any time during the pendency of a case and require the attorney to file documents electronically using CM/ECF.

- (5) The clerk's office or any assigned 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 most cost-effective determination of matters pending before the court. The court may also amend these procedures at any time without prior notice.
- (6) Nothing in this *Electronic Case Filing Administrative Policies and Procedures Manual* supercedes the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, or the Local Rules and Standing Orders of this district.
- (7) Juvenile criminal matters may only be filed electronically by court personnel unless, after hearing, the court rules that the juvenile shall be tried as an adult.
- (8) Rule 6 of the Federal Rules of Civil Procedure and Rule 45 of the Federal Rules of Criminal Procedure shall govern the computation of time under these procedures.
- (9) As part of making an appearance in every case, an attorney shall file a Notice of Appearance which will include the attorney's name and the name of the attorney's law firm. The attorney also shall file contemporaneously a disclosure statement in accordance with Federal Rules of Civil Procedure 7.1, Federal Rules of Criminal

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Procedure 12.4, Local Civil Rule 7.3, EDNC, and Local Criminal Rule 12.3, EDNC.

- (10) Any electronically generated designation of a district judge or magistrate judge does not mean that the judge so designated is assigned to the case.
- (11) When multiple attorneys in a law firm appear in a case, and at least one attorney is a registered filing user, service of any court generated document (i.e., orders, notices, etc.) will only be made on the attorney(s) registered in CM/ECF. It is the responsibility of the law firm's electronic users to notify and serve all other firm members appearing in the case who are not receiving electronic notification. The non-registered attorneys will not receive paper copies from the court.

B. Portable Document Files

CM/ECF only accepts documents in a portable document format (PDF). Although there are two ways to create PDF documents (electronically converted PDFs and scanned PDFs), **the court prefers electronically converted PDFs.**

- (1) Electronically converted PDFs are created from word processing documents (MS Word®, WordPerfect®, etc.) using Adobe Acrobat® or similar software. They are text searchable and their file size is small.
- (2) Scanned PDFs are created from paper documents processed through an optical scanner. Most scanned PDF's are not searchable and have a large file size. Because documents scanned in color or containing a graphic take much longer to upload, filing parties must configure their scanners to scan documents at 300 dpi and in black

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and white rather than in color. Documents appearing in color in their original form (such as color photographs) may be scanned in color and then uploaded to CM/ECF.

- (3) PDF Forms. When using fillable forms to file in CM/ECF, the court prefers that these forms be “flattened.”

C. Registration & Passwords

- (1) Attorneys admitted to the bar of this court, including special appearance attorneys, shall register as filing users of this court’s CM/ECF prior to filing any pleadings. Registration shall be submitted on an Attorney Registration Form, a copy of which is on the court’s web page (www.nced.uscourts.gov.) All signed original Attorney Registration Forms shall be mailed to the United States District Court, Attention: ECF Attorney Registration, Post Office Box 25670, Raleigh, NC 27611.
- (2) A registered user shall not allow another person to file a document using the user’s log-in and password, except for an authorized agent of the filing user. Use of a user’s log-in and password by another person shall be deemed to be the act of the registered user. Once registered, the attorney shall be responsible for all documents filed with his or her password.
- (3) Registration constitutes consent to service of all documents by electronic means as provided in these procedures.
- (4) To ensure that the clerk’s office has correctly entered a registering attorney’s internet e-mail address into the system, the clerk’s office will send the attorney a

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confirmation message by e-mail.

- (5) Within fourteen days after receiving his or her initial password, an attorney must select a new password. Please consult the court's *CM/ECF User's Manual* for detailed instructions on changing passwords.
- (6) After registering, an attorney may change the password. If an attorney comes to believe that the security of an existing password has been compromised and that a threat to CM/ECF exists, the attorney must change the password immediately.
- (7) An attorney whose e-mail address, mailing address, telephone or fax number has changed from that of the original online attorney registration form shall edit his or her information in CM/ECF. In addition, if the attorney currently has an active case, he or she must timely file a notice of such change and serve a copy of the notice on all other parties.
- (8) If the clerk's office receives a "bounce-back" (i.e., an undeliverable e-mail) notice from a registered filer's primary e-mail account, the filer will be given one opportunity to update CM/ECF. With the second bounce-back, the court may issue a show cause order regarding the suspension of the registered user's filing privileges. Any bounce-back notice generated by a secondary e-mail address will not be served. The only action taken on this kind of bounce-back notice is that it will be deleted from the clerk's office e-mail box. It is the registered attorney's responsibility to maintain and update all e-mail addresses, primary and secondary, associated with their account.

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D. Filing and Service of Civil Case Opening Documents

- (1) Except for those cases listed under Section H(1)(a) of this policy manual, registered users shall open all new civil lawsuits electronically.
 - (a) Payment in the form of cash, check or credit card may be delivered to the clerk's office from 8:30 a.m. to 4:30 p.m. Also, payment may be made by credit card by telephone to the clerk's office from 8:30 a.m. to 4:30 p.m. When paying with any of these options, the filing fee must be paid and the filer must have a court issued receipt number before opening the case electronically.
 - (b) An additional credit card payment option called pay.gov allows filers to pay the filing fee contemporaneously with the electronic case opening. The pay.gov link will appear when docketing the case initiating event (i.e., complaint, notice of removal, etc.) Pay.gov users are cautioned that clicking on the final submit button more than once could result in overpayment of the filing fee.
 - (c) The clerk's office will not make any filing fee refunds without an order from the court. Counsel must make a motion for refund (using the CM/ECF event 'Motion For Refund of Fees Paid Electronically') and attach a proposed order.
- (2) The party requesting a summons must complete the form and submit it as an attachment to the case initiating document or any other document in which a

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summons is necessary. The clerk's office will issue and docket the summons in CM/ECF. Counsel can retrieve the issued summons from the NEF.

A party may not electronically serve a summons, but instead must make service according to Rule 4 of the Federal Rules of Civil Procedure.

E. Electronic Filing

- (1) Electronic transmission of a document to CM/ECF, together with the transmission of a NEF from the court, constitutes filing of the document for all purposes of the Federal Rules of Civil and Criminal Procedure and constitutes entry of the document on the docket maintained by the clerk of court pursuant to Rules 58 and 79 of the Federal Rules of Civil Procedure and Rules 49 and 55 of the Federal Rules of Criminal Procedure.
- (2) A document filed electronically shall be deemed filed at the time and date stated on the NEF received from the court.
- (3) A document will be deemed timely filed if filed prior to midnight Eastern Time (12:00 a.m.). However, if the time of day is an issue, the assigned judge may order that a document be filed by a time certain.
- (4) If filing a document requires leave of court, such as an amended complaint, the attorney shall attach the proposed document as an attachment to the motion according to procedures in Section L. If the court grants the motion, the order will direct the attorney to file the document electronically with the court.

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- (5) The clerk's office shall not maintain an official paper court file in any case begun after the effective date of these procedures except as otherwise provided in these procedures. The official court record shall be the electronic file maintained on the court's servers. The official record shall include, however, any conventional documents or exhibits filed in accordance with these procedures.
- (6) All pleadings and documents filed electronically must be transmitted in the form prescribed by Rule 10 of the Federal Rules of Civil Procedure and this court's Local Rules. All documents filed electronically shall be titled in accordance with the approved dictionary of civil and criminal events of CM/ECF of this court.

F. Service of Electronically Filed Documents

- (1) Whenever a pleading or other document is filed electronically, CM/ECF will automatically generate and send a NEF to the filing user and registered users of record. The user filing the document shall retain a paper or digital copy of the NEF, which shall serve as the court's date-stamp and proof of filing.
- (2) Transmission of the NEF shall constitute service of the filed document and shall be deemed to satisfy the requirements of Rules 5(b)(2)(D), 5(b)(3), and 77(d) of the Federal Rules of Civil Procedure and Rule 49(b) of the Federal Rules of Criminal Procedure.
- (3) All documents filed using CM/ECF shall include a certificate of service identifying the manner in which the service on each party was accomplished. A sample

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certificate of service form is attached as Form A.

- (4) A *pro se* litigant and attorneys who have not yet registered as a CM/ECF user shall serve and be served with a paper copy of any electronically filed pleading or other document in accordance with the provisions of Rule 5 of the Federal Rules of Civil Procedure. The filing party may include the NEF to provide the recipient with proof of the filing. See Form A for the format of the certificate of service that should be used.
- (5) *Pro se* litigants and attorneys allowed to file documents manually pursuant to Section A.(4) shall deliver a document to the clerk's office for scanning and uploading into CM/ECF and must serve manual copies on all non-registered parties to the case. Such filers should expect some delay in the uploading and subsequent electronic noticing of the document.
- (6) Service by electronic means shall be treated the same as service by mail for the purpose of adding three (3) days to the prescribed period to respond pursuant to Rule 6(d) of the Federal Rules of Civil Procedure and Rule 45(c) of the Federal Rules of Criminal Procedure.
- (7) When multiple attorneys in a law firm appear in a case, and at least one attorney is a registered filing user, service of any court generated document (i.e., orders, notices, etc.) will only be made on the attorney(s) registered in CM/ECF. It is the responsibility of the law firm's electronic users to notify and serve all other firm members appearing in the case who are not receiving electronic notification. The non-registered attorneys will not receive paper copies from the court.

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G. Deadlines

Filing documents electronically does not in any way alter any filing deadlines. All electronic transmissions of documents must be completed prior to midnight, Eastern Time, in order to be considered timely filed that day. For example, a filing procedure commenced at 11:58 p.m. on March 1, but completed on March 2 at 12:03 a.m. will be considered filed on March 2. The NEF will note the official date and time of filing. Where a specific time of day deadline is set by court order or stipulation, the electronic filing must be completed by that time.

H. Special Filing Requirements and Exceptions

- (1) The following documents shall be filed only in paper:
 - (a) In camera submissions; (see also Section T)
 - (b) The state court record and materials in capital cases and non-capital cases where the record is voluminous filed under the Rules Governing Section 2254 Cases in the United States District Courts in habeas corpus proceedings; and
 - (c) Hearing and trial exhibits.

- (2) The following documents shall be filed in paper, be docketed in CM/ECF by the clerk's office:

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- (a) Sealed and *qui tam* cases;
 - (b) All handwritten pleadings;
 - (c) All pleadings and documents filed by *pro se* litigants;
 - (d) All pleadings and documents filed by non-registered attorneys who have obtained leave of court to file in paper form;
 - (e) The charging document in a criminal case, such as the complaint, indictment, and information;
 - (f) Applications/Affidavits for search and arrest warrants and related papers;
 - (g) Federal Rules of Criminal Procedure 5 and 20 documents received from another court;
 - (h) Any pleading or document in a criminal case containing the signature of a defendant, such as appearance bonds, orders setting conditions of release, a waiver of indictment or letters from a defendant requesting specific relief;
 - (i) Petitions for violations of supervised release; and
 - (j) CJA 23 Financial Affidavit
- (3) The following documents may be received by the clerk's office in criminal and *habeas corpus* cases, but are not filed, electronically or otherwise, unless ordered by the court:
- (a) Pretrial service reports;
 - (b) Psychiatric and psychological reports;
 - (c) Pre-sentencing reports and other papers submitted prior to sentencing; and
 - (d) CJA 20 and 21 Forms.

Any documents filed in paper that are not exempt pursuant to this section must be

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accompanied by a motion and a proposed order for leave to file in paper form. The motion must state the reason for not filing the documents electronically.

I. Hyperlinks in Documents

- (1) Electronically filed documents may contain the following types of hyperlinks:
 - (a) Hyperlinks to other portions of the same document;
 - (b) Hyperlinks to a source document for a citation; and
 - (c) Hyperlinks to other documents filed within CM/ECF.

NOTE: In order for a hyperlink to work when creating the PDF document you must “publish to PDF” rather than “print to PDF” when converting the document from its word processing format.

- (2) Hyperlinks to personal websites or organizations, including law firms, are strictly forbidden.
- (3) The court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site may be linked. The court accepts no responsibility for any availability or functionality of any hyperlink.

J. Signature

- (1) Attorneys. The user log-in and password required to submit documents to CM/ECF shall serve as that user's signature for purposes of Federal Rule of Civil Procedure

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11 and for all other purposes under the Federal Rules of Civil and Criminal Procedure and the Local Rules of this court. All electronically filed documents must include a signature block and must set forth the attorney's name, address, telephone number, bar number and e-mail address. A criminal defense attorney shall state whether he or she is appointed or retained. The name of the CM/ECF user under whose log-in and password the document is submitted must be preceded by a “/s/” and typed in the space where the signature would otherwise appear. The correct format for an attorney signature is as follows:

/s/ Judith Attorney
Attorney for (Plaintiff/Defendant)
ABC Law Firm
123 South Street
Raleigh, North Carolina 27601
Telephone: (919) 123-4567
Fax: (919) 123-7654
E-mail: judith_attorney@law.com
State Bar No. 12345
LR 83.1 Counsel (civil) or LR 57.1 Counsel (criminal)
Appointed or Retained (criminal only)

Any party challenging the authenticity of an electronically filed document or the attorney’s signature on that document must file an objection to the document within fourteen days of receiving the NEF.

- (2) Special Appearance. Attorneys who are members in good standing of the bar of a

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United States District Court and the bar of the highest court of any state or the District of Columbia may practice in this court for a particular case in association with a member of the bar of this court.

By filing a Notice of Appearance, completing an Electronic Filing Attorney Registration Form, and complying with Section J.(1), an attorney agrees that:

- (a) the special appearance attorney will be responsible for ensuring the presence of an attorney who is familiar with the case and has authority to control the litigation at all conferences, hearings, trials and other proceedings;
- (b) the attorney submits to the disciplinary jurisdiction of the court for any misconduct in connection with the litigation in which the attorney is specially appearing; and
- (c) for purposes of Federal Rule of Civil Procedure 11, the Federal Rules of Civil and Criminal Procedure and the Local Rules of this court, the special appearance attorney's electronic signature shall carry the same force and effect as an original signature.

An attorney who is not a member of the bar of this court will not receive electronic notification until the attorney becomes a registered CM/ECF filer with this court and files a Notice of Appearance.

A member of the bar of this court who accepts employment in association with a special appearance attorney is responsible to this court for the conduct of the

litigation of the proceeding, must be a CM/ECF registrant and shall review for submission by the special appearance attorney all pleadings and papers electronically filed in compliance with Section J.(1). Such member must be present during pretrial conferences, potentially dispositive proceedings, and trial, unless excused by the court.

Any document filed by a special appearance attorney that does not comport with local counsel's standards may be objected to. Any such objection must be filed within seven (7) days of the issuance of the NEF for the document.

- (3) Non-Attorney Signature, Generally. If the document requires the signature of a non-attorney, the filing party or the clerk's office shall scan the original document, then electronically file it on the CM/ECF. The electronically filed document as it is maintained on the court's servers shall constitute the official version of that record. A non-filing signatory or party who disputes the authenticity of an electronically filed document with a non-attorney signature or the authenticity of the signature on that document must file an objection to the document within fourteen days of receiving the NEF.

- (4) Multiple Signatures. The filing user of any document requiring more than one signature (e.g., pleadings filed by special appearance attorneys, stipulations, joint status reports) must list thereon all the names of other signatories by means of "/s/" block for each. By submitting such a document, the filing attorney certifies that each of the other signatories has expressly agreed to the form and substance of the document and that the filing attorney has their actual authority to submit the document electronically. A non-filing signatory or party who disputes the

authenticity of an electronically filed document containing multiple signatures must file an objection to the document within fourteen days of the date on the NEF.

- (5) Affidavits. Except as provided in Sections H(2)(d) and H(2)(e), affidavits shall be filed electronically. The filing party shall scan the original affidavit, then electronically file it CM/ECF.

K. Privacy

Pursuant to Federal Rules of Civil Procedure 5.2 and Federal Rules of Criminal Procedure 49.1, addressing the privacy concerns created by internet access to court documents, unless otherwise ordered by the court, the filing attorney shall modify certain personal data identifiers in pleadings and other papers as follows:

- (1) **Social Security Numbers.** If an individual's social security number must be included in a document, only the last four digits of that number shall be used.
- (2) **Names of Minor Children.** If the involvement of a minor child must be mentioned, only the initials of that child shall be used.
- (3) **Date of Birth.** If an individual's date of birth must be included in a document, only the year shall be used.
- (4) **Financial Account Numbers.** If financial account numbers are relevant, only the last four digits of these numbers shall be used.

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- (5) Home Addresses. (In Criminal Cases Only) If a home address must be included, only the city and state shall be listed.

It is not the responsibility of the clerk's office to review each document to determine if pleadings have been modified and are in the proper form.

L. Attachments to Filings and Exhibits (other than hearing and trial exhibits)

- (1) Generally.

- (a) Attachments to filings and exhibits must be filed in accordance with the court's CM/ECF User's Manual, unless otherwise ordered by the court.
- (b) All exhibits and attachments, whether filed electronically or in paper, must contain on their face a prominent exhibit number or letter.

- (2) Attachments and Exhibits Filed Electronically

- (a) The filing party shall not submit as an exhibit or attachment any pleading or other paper already filed in CM/ECF, but shall refer to that document via a hyperlink to the corresponding docket entry number. See preference pages for exceptions.
- (b) Attachments and exhibits must be identified with a clear and complete description of the document. (e.g., Exhibit 1 is insufficient. Affidavit of Jane Doe would meet the requirement.) Additionally, each attached

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document must be separated as a filing party would do when creating a hard copy version of the documents.

- (c) When filing a document with more than five (5) exhibits or attachments, the first attached exhibit or attachment must be an index of all of the subsequently attached documents.
- (d) The filing party is required to verify the readability of scanned documents before filing them in CM/ECF.

(3) Attachments and Exhibits Filed Manually

- (a) Parties desiring to file any attachments or exhibits manually (in paper form) must first seek leave of court.
- (b) If one or more attachments or exhibits to a motion, brief, or other electronically filed documents are being submitted in paper form pursuant to Section H., or by leave of court, the motion, brief, or other document must contain a notice of that fact in the text. For example:

(Exhibits 1, 2, and 3 to this motion are filed electronically. Exhibits 4 and 5 are filed in paper form)

or

(All exhibits to this brief are filed in paper form)

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- (c) When filing a document with more than five (5) exhibits or attachments, the first attached exhibit or attachment must be an index of all of the subsequently attached documents.

M. Orders and Judgments

- (1) All orders, decrees and judgments will be entered electronically by the court. Any order signed electronically shall have the same force and effect as if the judge had affixed the signature to a paper copy and entered it manually on the docket. Electronic filing of these documents shall constitute entry on the docket under Federal Rules of Civil Procedure 58 and 79 and Federal Rules of Criminal Procedure 49 and 55. When mailing paper copies of an electronically filed order to a party who is not a registered user in CM/ECF, the clerk's office will include the NEF to provide the non-filing user with proof of the filing.
- (2) The court may issue routine orders by a text-only docket entry for which a NEF will be generated. In such cases, no PDF document will be issued, and the text-only entry shall constitute the court's only order on the matter. Such docket text orders are official and binding. The clerk's office will send a paper copy of the text-only order to non-filing users in the case.

NOTE: Please see Rule 29 of the Federal Rules of Civil Procedure for the discovery related extensions of time, upon written stipulation of counsel, that do not require court approval.

- (3) All proposed orders should be filed as attachments to the underlying motion seeking

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entry of the order. In addition, counsel should check this court's website, <http://www.nced.uscourts.gov>, for any judge-specific preferences regarding proposed orders.

- (4) When multiple attorneys in a law firm appear in a case, and at least one attorney is a registered filing user, service of any court generated document (i.e., orders, notices, etc.) will only be made on the attorney(s) registered in CM/ECF. It is the responsibility of the law firm's electronic users to notify and serve all other firm members appearing in the case who are not receiving electronic notification. The non-registered attorneys will not receive paper copies from the court.

N. Correcting Docket Entries

- (1) Once a document is submitted and becomes part of the case docket, corrections to the docket are made only by the clerk's office. CM/ECF will not permit the filing party to make changes to the document(s) or the docket entry in error once the transaction has been accepted.
- (2) A document incorrectly filed in a case may be the result of posting the wrong PDF file to a docket entry, or selecting the wrong document type from the menu, or entering the wrong case number and not catching the error before the transaction is completed. **The filing party should not attempt to refile the document.**
- (3) As soon as possible after an error is discovered, the filing party should contact the clerk's office with the case number and document number for which the correction is being requested. If appropriate, the court will make an entry indicating that the

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document was filed in error. The filing party will be advised if the document needs to be refiled.

O. Transcripts

- (1) Proceedings of this court. Transcripts, prepared by court reporters (court staff and contract reporters), are available to the public electronically pursuant to the guidelines established by the Judicial Conference of the United States.
- (2) Transcripts from other courts. A transcript of a proceeding of another court shall be filed electronically in PDF, if so available, otherwise on paper.
- (3) Depositions. Subject to the provisions of Local Civil Rule 26.1(a), EDNC, depositions shall be filed electronically in CM/ECF.

P. Facsimile Transmissions

No pleadings or other documents shall be submitted to the court for filing by facsimile transmission without prior permission from the court.

Q. Technical Failures

Given the seriousness of technical failures, users are encouraged to file during normal business hours so that alternative means of filing will be possible. The CM/ECF site will be considered a “technical failure” if the site is unable to accept filings continuously or

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intermittently over the course of any period of time greater than one hour after 10:00 a.m. Eastern Time that day. The court's scheduled routine maintenance will not be considered a technical difficulty. The court's website will be the source of notification for scheduled maintenance. The initial point of contact for any practitioner experiencing difficulty is the Help Desk. The telephone number is:

CM/ECF Help Desk: 1-866-855-8894

- (1) If the court's CM/ECF site experiences a technical failure, a filing user may submit documents to the court that day in paper form provided that the documents are accompanied by the filing user's affidavit stating that the filing user attempted to file electronically at least two times in one hour increments after 10:00 a.m. Eastern Time that day. Please see Form B in the Forms Section.

The following methods are acceptable alternate means for filing documents in the event of a technical failure:

- (a) via electronic mail in a PDF attachment sent to the e-mail address for technical failures (technical-failure_NCED@nced.uscourts.gov); This e-mail box will only be monitored by the court upon confirmation of a technical failure within the court's CM/ECF site; or
 - (b) in person, by bringing the document to the clerk's office in paper.
- (2) A filing user whose filing is untimely as the result of a technical failure of the court's CM/ECF site may seek appropriate relief from the court. If the user chooses to file

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the untimely document it shall be accompanied by a motion for leave to deem the document timely filed. However, filing users are cautioned that, in some circumstances, the court lacks the authority to grant an extension of time to file (e.g., Rule 6(b) of the Federal Rules of Civil Procedure, Rule 45(b) of the Federal Rules of Criminal Procedure, and Rule 4 of the Federal Rules of Appellate Procedure).

- (3) Problems with the filing user's system, such as phone line failures, problems with the filing user's internet service provider, or hardware or software problems, will not constitute a technical failure under these administrative procedures nor excuse an untimely filing. A filing user who cannot file documents electronically because of a problem on the filing user's system must file the documents manually along with a motion for leave to file in paper form. The motion, with an attached proposed order, must state the reason for not filing the documents electronically.

R. *Pro Se* Litigation

- (1) A party who is not represented by an attorney shall file with the court paper originals of all documents. The clerk's office will scan these original documents into CM/ECF. The electronically filed document as it is maintained on the court's servers shall constitute the official version of that record.
- (2) As part of making an appearance in every case, all pro se litigants (other than prisoners) shall file contemporaneously a disclosure statement in accordance with Federal Rules of Civil Procedure 7.1 and Local Civil Rule 7.3.

S. Access to Electronically Stored Documents

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- (1) Public Access at the Court. Electronic access to the electronic docket and documents filed in CM/ECF is available for viewing to the public at no charge at the clerk's office during regular business hours. A copy fee for an electronic reproduction is required in accordance with 28 U.S.C. § 1914.
- (2) Internet Access. Remote electronic access to CM/ECF for viewing purposes is limited to subscribers to the Public Access to Court Electronic Records ("PACER") system. The Judicial Conference of the United States has ruled that a user fee will be charged for remotely accessing certain detailed case information, such as filed documents and docket sheets in cases, but excluding review of calendars and similar general information.
- (3) Conventional Copies and Certified Copies. Conventional copies and certified copies of electronically filed documents may be purchased at the clerk's office. The fee for copying and certifying will be in accordance with 28 U.S.C. § 1914.

T. Restricted Access Documents

(1) Filing Restricted Documents in CM/ECF

(a) Sealed Documents

1. Except for motions filed under seal in accordance with Section T(1)(a)7 of this Policy Manual, each time a party seeks to file under seal, said party shall accompany the request with a motion to seal.

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The motion to seal may be filed without a supporting memorandum only if the filing party can cite a statute or rule (federal, local or standing order) that requires the filing to be sealed. Absent such authority, the filing party must submit a supporting memorandum that specifies:

- (I) the exact document or item, or portions thereof, for which filing under seal is requested;
- (ii) how such request to seal overcomes the common law or the First Amendment presumption to access;
- (iii) the specific qualities of the material at issue which justify sealing such material, taking into account the balance of competing interest in access;
- (iv) the reasons why alternatives to sealing are inadequate; and
- (v) whether there is consent to the motion.

In addition to the motion and supporting memorandum, the filing party must set out such findings in a proposed order to seal, which should be submitted in accordance with Section M of this Policy Manual.

2. All proposed protective orders submitted to the court must contain the language in Section T(1)(a)1(I) through (v) with respect to the filing of sealed material.
3. The motion to seal shall be a public document and docket entry, which will give the public notice of the request to seal and a

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reasonable opportunity to challenge it. The memorandum in support may be filed under seal.

4. The proposed sealed document shall be filed in accordance with Local Civil Rule 79.2 and Local Criminal Rule 55.2 and shall remain under seal pending the court's ruling on the motion to seal.
 - (I) If the motion to seal is allowed, the clerk's office will modify the sealed docket entry by removing the word 'proposed';
 - (ii) If the motion to seal is denied, the sealed docket entry will remain proposed and under seal unless the court orders otherwise.
5. The filing party must docket the proposed sealed document as the first docket entry, using the CM/ECF events specifically created for sealed documents. The motion to seal must be docketed after the proposed sealed document, and should link back to the proposed sealed document. The proposed order should be attached to the motion to seal.
6. In the event that a filing party seeks to file materials that have been designated confidential by another party or individual, the filing party shall provisionally file the materials under seal in accordance with Local Civil Rule 79.2 and Local Criminal Rule 55.2, with notice served on the party or individual who desires to maintain the

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materials under seal.

- (I) The filing party is required to file a notice of filing pursuant to this subsection, in lieu of filing a motion to seal, which must be docketed after the filing of the sealed material and link back to the entry or entries being filed under seal. The filing party need not file a motion to seal or otherwise defend another party or individual's request that the materials remain sealed and the filing of the materials under seal shall not be binding on the court.
- (ii) Within seven (7) days after service of such notice, the party or individual desiring that the materials be maintained under seal shall file a motion to seal and supporting memorandum in accordance with Section T(1)(a)1.
- (iii) Documents submitted under seal in accordance with this subsection will remain under seal pending the court's ruling on the motion to seal. If the party desiring that the information be maintained under seal does not timely file a motion to seal, then the materials will be deemed unsealed, without further order of the court.

- 7. In criminal cases, motions regarding the substantial assistance of a defendant shall be filed under seal without a motion to seal, pursuant to Standing Order No. 09-SO-2;

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(b) *Ex Parte* Documents

1. Except for those *ex parte* motions filed pursuant to Rule 17(b) and Rule 49.1 of the Federal Rules of Criminal Procedure, *ex parte* docket entries and the corresponding documents are visible to the public, but the Notice of Electronic Filing (NEF) is only transmitted to the filing attorney and the court.
2. The filing party must docket the *ex parte* document using the CM/ECF events specifically created for *ex parte* documents. **If an order is to be entered *ex parte*, the caption of the proposed order must be entitled *Ex Parte* Order.**
 - (I) Requests for subpoenas pursuant to Rule 17(b) of the Federal Rules of Criminal Procedure must be docketed using the event ***Ex Parte* Motion for Issuance of Subpoena**, specifically created for this request. The proposed order, entitled ***Ex Parte* Order**, must be attached. A generic docket entry (***EX PARTE* MOTION**) will be created and will be public. The corresponding documents will not be viewable to the public. The NEF is restricted to court users and the primary email address for the attorney for the filing party.
 - (ii) *Ex Parte* Applications for Authorization and Payment for Investigative, Expert or Other Services pursuant to the Criminal Justice Act and Rule 49.1 of the Federal Rules of

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Criminal Procedure shall be filed *in camera*. The motion must be docketed using the event ***Ex Parte Motion for Investigative, Expert or Other Services*** specifically created for these applications. The proposed order, entitled ***Ex Parte Order***, must be attached. Neither the docket entry nor the document will be viewable to the public. The NEF is restricted to court users and the primary email address for the attorney for the filing party.

- (iii) An *ex parte* motion for temporary restraining order pursuant to Rule 65(b) of the Federal Rules of Civil Procedure must be docketed using the event ***Ex Parte Motion for TRO***. The proposed order, entitled ***Ex Parte Temporary Restraining Order***, must be attached. The docket entry (*EX PARTE MOTION*) and corresponding document will be viewable to the public, but the Notice of Electronic Filing (NEF) will only be transmitted to the filing attorney and the court. Using the non-*ex parte* event ***Motion for Temporary Restraining Order*** will result in the NEF going to any counsel who has appeared in the case, or who has added the case to his or her CM/ECF account.

- (iv) All other *ex parte* motions must be docketed using the event ***Ex Parte Motion***. The proposed order must be attached to the motion. If the order is to be entered *ex parte*, the caption of

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the proposed order must be entitled ***Ex Parte Order***. A generic docket entry (*EX PARTE MOTION*) will be created and will be viewable to the public. The corresponding documents will be viewable to the public, but the NEF will only be transmitted to the filing attorney and the court.

3. Excluding those documents filed in accordance with Section T(1)(b)2(I) and (ii), a party desiring to seal an *ex parte* document or docket entry must make a motion to seal in accordance with Section T(1)(a)1 of this manual. The filing party must use the event ***Ex Parte Motion to Seal*** when the motion to seal is filed *ex parte*. The docket entry (*EX PARTE MOTION TO SEAL*) and corresponding document are viewable to the public, but the Notice of Electronic Filing (NEF) is only transmitted to the filing attorney and the court.

(c) *In Camera Submissions*

Unless otherwise instructed by the court, submissions made for *in camera* review must be submitted in hard copy to the clerk's office for possible entry into CM/ECF. Counsel must electronically file a Notice of Filing of the *in camera* submission. At the court's direction, the clerk's office will enter an *in camera* document into CM/ECF using the event ***In Camera Submission***. Neither the docket entry nor the document will be viewable to the public and no Notice of Electronic Filing will be transmitted.

(d) Sealed Cases

In accordance with Section H of this Policy Manual, new civil cases that are to be sealed in their entirety (e.g., *Qui Tam* civil cases) must be filed in paper and opened by the clerk's office. The case must also be accompanied by a motion to seal, in compliance with Section T(1)(a)1 of this Policy Manual, and a courtesy copy for the judge. As long as the case is sealed, all filings must be submitted to the clerk's office in paper for entry into CM/ECF. The sealed case will not be viewable to the public in CM/ECF. A search of the party names will not reveal the identity of the sealed case name or number. A search of the sealed number will result in the following message: **THIS CASE IS SEALED.**

(2) Viewing Restricted Access Documents

(a) Criminal

1. Pursuant to Rule 49.1 of the Federal Rules of Criminal Procedure, the following criminal documents shall not be included in the public case file and should not be made available to the public at the courthouse or via remote electronic access:

(I) Unexecuted summonses or warrants of any kind (e.g., search warrants, arrest warrants);

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- (ii) Pretrial bail or presentence investigation reports;
 - (iii) Statements of Reasons in the judgment of conviction;
 - (iv) Juvenile records;
 - (v) Documents containing identifying information about jurors or potential jurors;
 - (vi) Financial affidavits filed in seeking representation pursuant to the Criminal Justice Act;
 - (vii) Ex Parte requests for authorization of investigation, expert or other services pursuant to the Criminal Justice Act;
 - (viii) Sealed documents.
2. Pursuant to the court's standing order No. 09-SO-2, there will be no remote public access to plea agreements filed after August 28, 2009. Court personnel, including the United States Probation Office and attorneys of record in the case in which the plea agreement was filed may still have remote access to filed plea agreements. The public may have access to filed plea agreements at the public terminal in the clerk's office, subject to existing rules regarding these access methods.

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(b) Civil

1. Pursuant to Rule 5.2 of the Federal Rules of Civil Procedure, unless the court orders otherwise, in an action for benefits under the Social Security Act, or in an immigration proceeding relating to an order of removal, to relief from removal, or to immigration benefits or detention, access to an electronic file is authorized as follows:

(I) The parties and their attorneys may have remote electronic access to any part of the case file, including the administrative record;

(ii) Any other person may have remote electronic access only to:

a. The docket maintained by the court;

b. An opinion, order, judgment or other disposition of the court, but not any other part of the case file or the administrative record.

(c) Transcripts

Pursuant to the policy promulgated by the Judicial Conference of the United States, the electronic availability of transcripts of court proceedings is as follows:

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1. A transcript provided to a court by a court reporter or transcriber will be available at the office of the clerk of court for inspection only, for a period of 90 days after it is delivered to the clerk.
2. During the 90-day period, a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference. The transcript will be available within the court for internal use, and an attorney who obtains the transcript from the court reporter or transcriber may obtain remote electronic access to the transcript in CM/ECF.
3. After the 90-day period has ended, the filed transcript, unless it is filed under seal, will be available for inspection and copying in the clerk's office and for viewing and downloading from PACER.

(3) Service of Restricted Access Documents

(a) Criminal

Service of a sealed document, in compliance with Rule 49 of the Federal Rules of Criminal Procedure cannot be made through CM/ECF. Although counsel will receive a Notice of Electronic Filing (NEF) when a sealed document is filed, counsel will not be able to access the document through the NEF. Service of these documents must be made by other means, and such service must be reflected in the certificate of service.

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(b) Civil

Service of a sealed document, in compliance with Rule 5 of the Federal Rules of Civil Procedure, will be made through CM/ECF to all attorneys of record who have appeared in the case. When a civil sealed document is docketed in CM/ECF, the filing party will be required to affirmatively consent to service of the sealed document through CM/ECF. The **primary** email address for all counsel of record will be able to access the sealed document through the Notice of Electronic Filing (NEF). Any secondary email addresses will receive an NEF but will not have access to the sealed document. Service on all non-electronic filers, including pro se parties, must be made by other means, and such service must be reflected in the certificate of service..

FORM A

SAMPLE FORMAT

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA**

Case No.

)
)
Plaintiff,)
)
vs)
)
Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that on (Date) , 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: (Name of Party) , and I hereby certify that I have mailed the document to the following non CM/ECF participants: (Name of Party)

_____.

Respectfully submitted,

/s/ Judith Attorney
 Attorney for (Plaintiff/Defendant)
 ABC Law Firm
 123 South Street

[RETURN TO INDEX](#)

Raleigh, North Carolina 27601

Telephone: (919) 123-4567

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E-mail: judith_attorney@law.com

State Bar No. 12345

LR 83.1 Counsel (civil) or LR 57.1 Counsel (criminal)

Appointed or Retained (criminal only)

FORM B

SAMPLE FORMAT

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
Case No.**

Plaintiff,)
)
)
)
vs)
)
Defendant.)

DECLARATION OF TECHNICAL DIFFICULTIES

Please take notice that [Plaintiff/Defendant, Name of Party] was unable to file the attached [Title of Document] in a timely manner due to court technical difficulties. The deadline for filing the [Title of Document] was [Filing Deadline Date]. The reason(s) that I was unable to file the [Title of Document] in a timely manner and the good faith efforts I made prior to the filing deadline to both file in a timely manner and to inform the court and the other parties that I could not do so are set forth below.

[Statement of reasons and good faith efforts to file and to inform (including dates and times)]

I declare under penalty of perjury that the foregoing is true and correct.

Respectfully submitted,

/s/ Judith Attorney
Attorney for (Plaintiff/Defendant)
ABC Law Firm
123 South Street
Raleigh, North Carolina 27601
Telephone: (919) 123-4567
Fax: (919) 123-7654
E-mail: judith_attorney@law.com
State Bar No. 12345
LR 83.1 Counsel (civil) or LR 57.1 Counsel (criminal)
Appointed or Retained (criminal only)

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
Case No.**

Plaintiff,)
)
)
vs)
)
)
Defendant.)

NOTICE OF MANUAL FILING

Please take notice that [Plaintiff/Defendant, Name of Party] has manually filed the following document or item

[Title of Document or Object].

This document has not been filed electronically because

- the document or item cannot be converted to an electronic format
- the document or item is filed under seal
- Plaintiff/Defendant is excused from filing this document or item by court order.

The document or item has been manually served on all parties.

Respectfully submitted,

/s/ Judith Attorney
Attorney for (Plaintiff/Defendant)
ABC Law Firm
123 South Street
Raleigh, North Carolina 27601
Telephone: (919) 123-4567
Fax: (919) 123-7654
E-mail: judith_attorney@law.com
State Bar No. 12345
LR 83.1 Counsel (civil) or LR 57.1 Counsel (criminal)
Appointed or Retained (criminal only)

FORM D

SAMPLE FORMAT

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
Case No.**

Plaintiff(s),)
)
)
vs)
)
)
Defendant(s).)

NOTICE REGARDING EXHIBIT ATTACHMENT

Exhibit _____ which is an attachment to _____
_____ is in paper form only and is being maintained in the case file in
the Clerk’s Office.

Respectfully submitted,

/s/ Judith Attorney
Attorney for (Plaintiff/Defendant)
ABC Law Firm
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Raleigh, North Carolina 27601
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Fax: (919) 123-7654
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