

March 18, 2009

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

Elisabeth A. Shumaker  
Clerk of Court

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In re:

Electronic Submission of Documents and  
Conversion to Electronic Case Filing

No. 95-01

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**GENERAL ORDER**

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Before **HENRY**, Chief Judge, **TACHA, KELLY, BRISCOE, LUCERO, MURPHY, HARTZ, O'BRIEN, MCCONNELL, TYMKOVICH, GORSUCH,** and **HOLMES**, Circuit Judges.

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**Introduction**

On September 4, 2007, the court converted to a new electronic case management system. That conversion did not include, however, Electronic Case Filing (ECF) for counsel and litigants. Since that time, we have required counsel to submit materials via email for placement on the docket. On *March 31, 2009*, the United States Court of Appeals for the Tenth Circuit will transition to *voluntary* ECF. On *June 1, 2009*, ECF will become *mandatory* for counsel of record. This order outlines the broad requirements for filing in the new system. The court's *CM/ECF Users Manual*, which can be found at [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov), sets forth specific policies and procedures related to filing in the new system.

## **I. General Requirements**

It is essential that counsel seeking to file via ECF review carefully the technical and training information on the court's website. In addition to the required registration on Pacer, counsel must also confirm that certain technical requirements of the system are met. These requirements include, but are not limited to, obtaining the proper version of Java and Adobe software.

In addition, we urge all counsel to review the court's training materials, which include the comprehensive *CM/ECF Users Manual* and various software modules. These tools, which can be found on the court's website, provide a step-by-step guide to ECF. We have also provided a set of *Frequently Asked Questions*. As ECF registration and review of the training materials take time, we urge all counsel to prepare well in advance of the need to file pleadings.

Finally, counsel must review the file size of all submissions before proceeding in ECF. Documents filed with the court electronically are limited to 10 megabytes per uploaded file. More than one file may be uploaded to a particular entry (for attachments and the like) provided that the total file size for that entry does not exceed 50 megabytes.

## **II. Pleadings Filed**

### **A. Briefs**

Counsel filing via ECF may submit all briefs using the new system. In addition, however, within 2 business days of the filing, counsel *must* also submit to the clerk's office *7 hard copies of the brief*. Briefs may contain, but are not required to contain,

hyperlinks to cases and authorities. The brief itself must be filed in native pdf format.

Unless file size limitations are implicated, attachment(s) to briefs available in native pdf format must be included with the brief in the same pdf (that is, if the attachments required under 10<sup>th</sup> Cir. R. 28.2 are in native pdf they must be included with the brief in a single document and can be filed via ECF). Required attachments not available in native pdf may be submitted in scanned pdf format. If some of the required attachments are available in native pdf and some are not, all of the attachments may be scanned and attached separately to the entry. The ECF system allows counsel to attach additional files to the “brief filed” event.

In this regard, we note file size restrictions may require counsel to add attachments. Counsel should reference the *Users Manual* for instructions on how to submit attachments which are included in separate pdf files. As noted above, counsel must always ensure the documents meet the court’s file size limitations.

#### **B. Appendices and Addenda**

Unlike all other pleadings, appendices and addenda must be submitted to the court *in hard copy only*. Specifically, this exception includes appendices and addenda filed per Federal Rules of Appellate Procedure 10 and 30 and 10<sup>th</sup> Circuit Rules 9.2(B), 10 and 30. These materials cannot be submitted via ECF at this time. Filers must submit *two hard copies* of these materials to the clerk’s office. Where the appendix or addendum is due simultaneously with a motion or brief the hard copies *must be received in the clerk’s office within 2 business days of the ECF filing*.

### C. Other pleadings

All pleadings, with the exceptions noted in Section II B of this order, must be submitted via ECF (with the caveat that ECF is voluntary until June 1, 2009, at which time it will become mandatory). Included are preliminary pleadings and materials, motions, notices, petitions for rehearing, cost bills and submissions per Federal Rule of Appellate Procedure 28(j). As noted above, the only materials exempt from ECF are appendices and addenda. All ECF pleadings must be filed in native pdf and must meet the size requirements of the system outlined in the *General Requirements* section of this order.

ECF users need not submit any additional hard copies of pleadings filed through the electronic system with two exceptions. Those exceptions include briefs, as outlined in Section II A, and petitions for rehearing en banc. Specifically, *within 2 business days* of the ECF filing counsel or litigants *must submit 7 hard copies* of any brief filed (including jurisdictional and memoranda briefs). Likewise, *within 2 business days* of filing a petition for rehearing en banc (please note, this requirement does not include petitions for panel rehearing) the ECF filer *must submit 18 copies of the en banc request*. See 10<sup>th</sup> Cir. R. 35.4.

As is the case with briefs, any attachments to motions or other pleadings not available in native pdf may be scanned and submitted as separate attachments to the ECF entry. The court prefers, however, that attachments be submitted in native pdf if possible. All attachments must adhere to the file size restrictions outlined in the *General*

*Requirements* section of this order.

#### **D. Sealed Materials**

The ECF system includes events specifically intended for use in submitting sealed materials. Counsel and litigants may file a sealed motion, response or brief. Any failure to select the “Sealed Briefs and Motions” category in ECF will result in a public, rather than private, submission. Counsel and litigants are responsible for ensuring that sealed materials are filed using these events. Parties seeking to submit a motion to seal materials simultaneously with the materials should use these events even if the motion is not submitted as sealed.

#### **E. Case Openings Including Original Proceedings**

Parties will not be allowed to initiate appeals or original proceedings in ECF. The clerk’s office will open all appeals upon receipt of materials from the district courts, and will notify the parties via a Notice of Docket Activity. Likewise, the clerk’s office will open all agency matters and original petitions and will then notify the parties. Once ECF is mandatory on June 1, 2009, case initiating materials for original proceedings and agency matters must be submitted to the court in hard copy form or via email to [ca10\\_Clerk@ca10.uscourts.gov](mailto:ca10_Clerk@ca10.uscourts.gov). Until that date, parties may submit these materials in hard copy or via email to [esubmission@ca10.uscourts.gov](mailto:esubmission@ca10.uscourts.gov).

### **III. Pro Se Filers**

All pro se litigants may continue to file documents in paper form. In a given case, however, a pro se party who is a named appellant, petitioner, respondent or appellee may

seek permission to file using ECF. Specifically, pro se litigants seeking permission to submit documents via ECF should file a motion for permission in hard copy form at the earliest opportunity. The motion should be filed in the proceeding in which the party seeks to file. If approved, the pro se filer will be authorized to submit documents via ECF in that matter only.

#### **IV. Privacy Protection and Redactions**

All filers are required to follow the privacy and redaction requirements of Fed. R. App. P. 25(a)(5), as well as applicable federal rules of civil procedure, criminal procedure and the relevant bankruptcy rule. *See* Fed. R. Civ. P. 5.2; Fed. R. Crim. P. 49.1; Fed. R. Bankr. P. 9037. Required redactions include social security numbers and taxpayer identification numbers (filers may disclose the last four digits of a social security or tax identification number), birth dates (use year of birth only), minors' names (initials may be used), and financial account numbers (except those identifying property allegedly subject to forfeiture in a forfeiture proceeding). It is the *sole responsibility* of the filer to redact pleadings appropriately.

#### **V. Digital Signatures and Certification**

##### **A. Digital Signature**

All ECF submissions requiring a signature shall be signed in the following manner:

s/ Attorney (or where applicable, pro se party)  
Street Address  
Telephone Number  
Email Address

## **B. Certification**

In addition to a certificate of service, all ECF pleadings shall include certification that:

- (1) all required privacy redactions have been made;
- (2) if required to file additional hard copies, that the ECF submission is an exact copy of those documents;
- (3) the ECF submission was scanned for viruses with the most recent version of a commercial virus scanning program (naming the program, version, and the date of the most recent update), and, according to the program is free of viruses.

## **C. Service Requirements**

Effective June 1, 2009 when ECF becomes mandatory for all counsel of record, the Notice of Docket Activity generated by the Court's ECF system will constitute effective service of the filed document on system participants. Pleadings must, however, still include a certificate of service stating that service was effected via the ECF system. Pro se parties who are not registered to be served through the system must receive service in some other appropriate manner. For information regarding how to determine who is a system participant, please refer to the court's *CM/ECF Users Manual*.

Prior to June 1 2009, when ECF is voluntary, parties electing to use ECF may use Notices of Docket Activity for service provided they comply with the general service rules (i.e., that a certificate of service is included in the pleading and that filers confirm everyone in the case is served in the manner they wish—ECF for those who are registered

but email or hard copy for those who are not). Counsel and parties should consult the court's *CM/ECF User's Manual* for additional information on service requirements.

Entered for the Court,

A handwritten signature in cursive script that reads "Elisabeth A. Shumaker". The signature is written in black ink and includes a long, sweeping horizontal flourish at the end.

ELISABETH A. SHUMAKER  
Clerk of Court