

NOTICE  
SOUTHERN DISTRICT OF NEW YORK

12/02/02

The Court is planning to institute electronic case filing as well as a new case management program in February, 2003. On November 20, 2002 the Court adopted the following procedures for electronic case filing and Local Civil Rule 5.2, and invites comments.

**Procedures for Electronic Case Filing**

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

**1. Scope of Electronic Filing**

(a) The court will designate which cases will be assigned to the Electronic Filing System. Except as expressly provided and in exceptional circumstances preventing a Filing User from filing electronically, all petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the court in a case assigned to the Electronic Filing System must be filed electronically. A paper may be filed electronically (a) from a remote location, (b) by bringing it to the clerk's office during regular business hours on a diskette, in a form prescribed by the clerk, for input into the System, or (c) where permitted by the court, by bringing the paper to the clerk's office during regular business hours to be scanned into the System. A Filing User includes all attorneys who have registered as prescribed in Procedure 2 and are admitted to the bar of this court, including those admitted pro hac vice, or authorized to represent the United States. With court permission only, a Filing User may also include a party to a pending civil action who is not represented by an attorney and who registers as prescribed in Procedure 2. A party may only be a Filing User for the action in which the court has approved the party's status as a Filing User.

(b) Unless limited by their terms to civil cases, the provisions of these procedures relating to electronic filing apply in criminal cases that are initiated by the filing of an indictment or information. Electronic filing procedures shall not apply to applications for arrest, search or electronic surveillance warrants; for other orders in aid of or ancillary to a criminal investigation; or to proceedings relating to the grand jury.

(c) Electronic filing procedures shall not apply to Social Security Cases.

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

## **2. Eligibility, Registration, Passwords**

(a) Attorneys admitted to the bar of this court, including those admitted pro hac vice and attorneys authorized to represent the United States, may register and may be required to register as Filing Users of the court's Electronic Filing System. Unless excused by the court, attorneys not already Filing Users appearing in cases assigned to the Electronic Filing System must register as Filing Users forthwith upon the case being so designated. Registration is in a form prescribed by the clerk and requires the Filing User's name, address, telephone number, Internet e-mail address, and a declaration that the attorney is admitted to the bar of this court or authorized to represent the United States.

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

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

## **3. Consequences of Electronic Filing**

(a) Except as otherwise provided in Procedure 4 herein, electronic filing of a document in the Electronic Filing System consistent with these procedures, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, 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 under Fed.R.Civ.P. 58 and 79 and Fed.R.Crim.P. 49 and 55.

(b) When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court (subject to the exception set out in Procedure 4 below), and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically under Procedure 1, a document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the court.

(c) Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight local time where the court is located in order to be considered timely filed that day.

(d) Individual judges' practices should continue to be followed with respect to delivery of courtesy copies.

#### **4. Entry of Court Orders**

(a) All orders, decrees, judgments, and proceedings of the court will be filed in accordance with these procedures and entered on the docket kept by the clerk under Fed.R.Civ.P. 58 and 79 and Fed.R.Crim.P. 49 and 55. Each document signed by a judge shall be scanned so as to contain an image of the judge's signature and shall be filed electronically by the court, and the manually signed original shall be filed by the Clerk of the Court. In the event of a discrepancy between the electronically filed copy and the manually signed original, the manually signed original shall control.

(b) A Filing User submitting a document electronically that requires a judge's signature must promptly deliver the document in such other form as the court requires, if any.

#### **5. Attachments and Exhibits**

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

#### **6. Sealed Documents**

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

#### **7. Retention Requirements**

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

#### **8. Signatures**

(a) The user log-in and password required to submit documents to the Electronic Filing System serve as the Filing User's signature on all electronic documents filed with the court. They also serve as a signature for purposes of the Federal Rules of Civil Procedure, including Rule 11, the Federal Rules of Criminal Procedure, the local rules of this court, and any other purpose for which

a signature is required in connection with proceedings before the court. Each document filed electronically must indicate that it has been electronically filed. Electronically filed documents must include a signature block and must set forth the name, address, telephone number and (except in criminal cases) the attorney number, all in compliance with Local Civil Rule 11.1. In addition, the name of the Filing User under whose log-in and password the document is submitted must be preceded by an “s/” typed in the space where the signature would otherwise appear.

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

(c) A document requiring the signature of a defendant in a criminal case may be electronically filed only in a scanned format that contains an image of the defendant’s signature.

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

## **9. Service of Documents by Electronic Means**

Each person electronically filing a pleading or other document must serve a “Notice of Electronic Filing” on parties entitled to service under the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the local rules. The “Notice of Electronic Filing” must be served by e-mail, hand, facsimile, or by first-class mail postage prepaid. Service of the “Notice of Electronic Filing” constitutes service of the filed document. Attorneys and pro se parties who are not Filing Users shall be served with a paper copy of any electronically filed pleading or other document. Service of such paper copy must be made according to the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure and the local rules.

## **10. Notice of Court Orders and Judgments**

Immediately upon the entry of an order or judgment in a proceeding assigned to the Electronic Filing System, the clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Fed.R.Crim.P. 49(c) and Fed.R.Civ.P. 77(d). The clerk must give notice in paper form to a person who is not a Filing User in accordance with the Federal Rules of Civil Procedure or the Federal Rules of Criminal Procedure.

## **11. Technical Failures**

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

## **12. Public Access and Privacy Protection**

(a) A person may review at the clerk's office filings that have not been sealed by the court. A person also may access the Electronic Filing System at the court's Internet site [www.nysd.uscourts.gov] by obtaining a PACER log-in and password. A person who has PACER

access may retrieve docket sheets in civil and criminal cases and documents in a civil case, but only counsel for the government and for a defendant may retrieve documents in a criminal case. Only a Filing User under Procedure 2 herein may file documents.

(b) It is the responsibility of the Filing User carefully to examine documents that are filed for sensitive, private information and to make any appropriate motions to protect documents from electronic access when necessary. For example, as a rule, and regardless whether the document is to be filed electronically or in paper form, if the Social Security number of an individual must be included in a document, only the last four digits of that number should be used; if the involvement of a minor child must be mentioned, only that child's initials should be used; if an individual's date of birth is necessary, only the year should be used; and if financial account numbers are relevant, only the last four digits should be recited in the document.

### **Local Civil Rule 5.2 - Electronic Filing of Documents**

A paper filed by electronic means in accordance with procedures promulgated by the Court is, for purposes of Federal Rule of Civil Procedure 5(e), filed in compliance with the local civil rules of the Southern and Eastern Districts of New York.

The procedures for Electronic Case Filing are based on a consolidation of the Model Local District Court Rules for Electronic Case Filing for Civil and Criminal Cases as approved by the Judicial Conference of the United States, August 2002.

Proposed Local Civil Rule 5.2 has been adopted by the judges of the Eastern District of New York. This proposed rule was recommended for adoption by the Joint Committee on Local Rules for the Southern and Eastern District of New York.

Parties can access the Court's Web site at [www.nysd.uscourts.gov](http://www.nysd.uscourts.gov) for updates on the new case management and electronic case filing system.

Comments to the above are to be submitted, in writing, on or at the close of business December 17, 2002, to:

Committee on Rules of Practice and Procedure  
c/o Clifford P. Kirsch  
District Court Executive  
U.S. Courthouse  
500 Pearl Street, Room 820  
New York, NY 10007-1312