United States District Court Southern District of New York

CM/ECF Sealed Filings in Unsealed Civil and Miscellaneous Cases

Step-by-Step Instructions for Attorneys on How to Electronically File Sealed Documents in Unsealed Civil and Miscellaneous Cases

February 2020

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I. General Information

A. Who May File

Effective February 3, 2020, attorneys may electronically file sealed documents in civil and miscellaneous cases in CM/ECF if the following conditions are met:

- (1) The attorney has a valid individual PACER account.
- (2) The following is true:
 - Filing Under seal in ECF is permitted by the judge's Individual Practices. If not permitted, the sealed document(s) must be filed in the traditional manner, on paper.
 - A filing under seal must be preceded by either a motion or letter motion to seal, or a previous order of the Court permitting filing under seal.
- (3) If the Judge's Individual Practices permit sealed filing in ECF, then in addition to the motion the proposed sealed document must also be electronically filed under seal on ECF.
- (4) The civil or miscellaneous case is already open on ECF.
- (5) The civil or miscellaneous case is not filed under seal.
- (6) Filing parties must conform to the procedures for electronic filing under seal found in the court's Standing Order (19 MISC 0583) and revised ECF Rules & Instructions.

B. Attorney Checklist

Before filing a document under seal in a civil or miscellaneous case:

- Read and become familiar with the judge's Individual Practices.
- Read and become familiar with all instructions in this manual.
- Prepare the following documents to file and convert to PDF-A format:
 - Motion(s) or Letter Motion(s) to Seal or redact
 - Any documents that will be filed under seal
- Read and understand the viewing levels for document filing.
- Read and understand the difference between sealing and redactions on ECF.

C. Overview of Filing Under Seal

Electronic filing under seal consists of two steps if a previous order for sealing does not exist. If a previous order for filing under seal exists, skip to step two.

Sealed Filings in Unsealed CIV & MISC Cases

- File your Motion or Letter Motion to Seal or Redact in your pending (non-sealed) civil or miscellaneous case; AND
- (2) The proposed sealed document(s) must also be electronically filed under seal on ECF if permitted by the judge's Individual Practices.
- (3) Detailed instructions for each of these steps are included in this Manual.

To successfully file a sealed document in a civil or miscellaneous case electronically:

- Complete the entire process as instructed in this Manual.
- Enter all necessary information on CM/ECF screens.
- Docket the proper events and upload all PDF-A documents.
- Enter all necessary information on the ECF screens.
- **DO NOT** click the back button once you begin the process unless specified on the screen.
- DO NOT electronically file documents in a fully sealed case or a criminal case.
- DO NOT electronically file documents if sealed filings are not permitted in the judge's Individual Practices.
- DO NOT electronically file sealed documents without a Motion or Letter Motion to Seal, or a prior order of this court.
- **DO NOT** attempt to open a sealed case on ECF.

D. Viewing Levels for Sealed Filings

Pending the Court's decision on a Motion to file under Seal, attorneys can restrict access to a document:

Selected Parties	Access is restricted by the filer to those attorneys appearing for selected case participants, selected pro se parties with ECF access, and court personnel;
Ex-Parte	Access is restricted to the attorney(s) appearing for the filing party and court personnel.

Summary docket text is always visible to the public. Do not put confidential information in the docket text. Only PDF documents can be sealed.

E. Redactions

It is not possible to file both publicly and under seal in a single docket entry. You must therefore file the entire document, including exhibits, twice: once publicly in redacted form; and again, as a proposed sealed document in un-redacted form, with the redactions highlighted.

If an entire exhibit is confidential, substitute a page in the publicly filed entry noting the exhibit is filed under seal (a/k/a placeholder or slip sheet). Caution should be exercised when redacting electronically to ensure redacted text is fully masked. Not all forms of electronic redaction are

effective.

Note: If a party has multiple attorneys appearing on the party's behalf all attorneys will have access.

F. Exceptions

Electronic filing under seal is not permitted unless authorized by the <u>Individual Practices</u> of the judge to whom the filing is directed.

Electronic filing under seal is NOT permitted in criminal cases or cases sealed in their entirety.

Pro se parties are not permitted to electronically file under seal without express permission of the Court. This includes pro se parties granted general permission to file electronically.

New civil or miscellaneous cases that include case initiating documents sought to be filed under seal may not be filed electronically (Amended Standing Order, 15mc131).

Where electronic filing under seal is not permitted, the filing shall be submitted in the traditional manner, on paper. A copy of the sealing order must be attached to the outside of the envelope containing the documents to be filed under seal and must be hand delivered to the Records Management Office.

G. Hardship/Waiver

Any party unable to comply with a judge's requirement for electronic filing under seal through the ECF system, or who has reason to believe that a document should not be electronically filed, must move for leave of the Court to file in the traditional manner, on paper.

H. Filing Error

ECF Rule 21.8 - What if I mistakenly file sensitive or confidential information?

- (a) Contact the ECF Help Desk <u>via email</u> at helpdesk@nysd.uscourts.gov, Monday through Friday during normal Clerk's Office hours. The subject line should include the words "<u>Emergency Sealing Request</u>". The filing will be temporarily sealed and made inaccessible to PACER users. The suggested hours for the electronic filing of sealed documents are 8:30 AM – 4:00 PM, Monday through Friday, excluding holidays, when court staff are available to assist with any difficulties you may encounter. If the request is received after business hours,
- (b) it will be addressed the next business day.

(b) After notifying the ECF Help Desk, the filing party must ask the presiding judge, in writing, for the filing to be sealed by the Court.

(c) Electronically file a redacted version of the mistaken filing.

II. Instructions for Filing Under Seal

Log in to PACER using the attorney's individual PACER account.

Select District – New York Southern

Click [Civil] on the blue menu bar at the top of the CM/ECF screen. Select [Motion] under the Motions and Related Filings category.

	<u>Q</u> uery	<u>R</u> eports <mark>→</mark>	<u>U</u> tilities -	Sear <u>c</u> h	Help	Log Out		
Civil Events								
Open a Case <u>Open a Civil Case - Attorney</u> <u>Open a Miscellaneous Case - Attorney</u> Initial Pleadings and Service	Other ADI Disc Noti Tria	r Filings R Documents covery Docur ices l Documents	nents					
Complaints and Other Initiating Documents	Appeal Documents							
<u>Answers to Complaints</u>	<u>Otne</u> <u>Pro</u> p	osed Orders	ž					
Motions and Related Filings <u>Motions</u> <u>Replies, Opposition and Supporting Document</u>	<u>s</u>							

Type the case number and click find this case.



Verify the case title and click Next.



Select the party filing [filer] the motion. Hold the Ctrl key (Command key in Mac) to

select multiple filer names and use the mouse to highlight additional filers. Then click

Next.



The system prompts you with the question, Is this a letter motion? Select the appropriate response.

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Motions				
<u>1:19-cv-00088-KPF-SN </u> Hemingway et al	<u>Poe v.</u>			
APPEAL,CASREF,ECF				
Is this a letter motion?				
○ Yes ● No Next Clear				

Scroll through the Available Events list and click on the event that you would like to use.

In this scenario we are selecting seal to file a motion to seal. Click Next.

CM ECF Civil - Criminal - Query Reports - Utilities - Search Help Log Out
Motions
1:19-cv-00088-KPE-SN Poe v
Hemingway et al
APPEAL, CASREF, ECF
Start typing to find an event.
Available Events (click to select events) Selected Events (click to remove events)
Add Applicant(s)
Add Party(ies)
Adjourn Conference
Alter Judgment
Amend/Correct
Appeal Clerk's Decision on Taxation of Costs
Appeal In Forma Pauperis
Appear
Appear Pro Hac Vice
Appoint Arbitrator
Appoint Counsel
Appoint Counsel (Habeas Corpus Case)
Appoint Custodian
Appoint Expert
Appoint Guardian/Attorney ad Litem
Next Clear

To file a motion to file a document under seal, select the "Seal" event.

Motions		
1:19-cv-00088-KPF-SN Poe	<u>v.</u>	
<u>Hemingway et al</u>		
APPEAL,CASREF,ECF		
seal	Click your selection, or use arr	ows to highlight it and press Enter.
Available Events (click to selec	t events)	Selected Events (click to remove events)
Seal	<u>^</u>	
Seal Case		
Seal Document		
Sealed Motion	× .	
Next Clear		

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	Star	t typing to fin	d another	ev	ent.				
Available Events (click to sele	ct eve	nts)			Selected	Events (click	k to remove	e events))
Release of Bond Obligation Release of Funds Remand Remand to Agency Remand to Bankruptcy Court Remand to State Court Remove from Suspense Docket Reopen Reopen Case Return of Child Return of Property Revalidate Subpoenas Sale of Unclaimed Seaman Effects Sanctions Seal Next Clear				~	Seal				

Attach your motion to seal [PDF(s)] to the event.

	Crimi <u>n</u> al -	Query Re	eports 🗸	<u>U</u> tilities -	Sear <u>c</u> h	н
Motions 1:19-cv-00088-KPF-SN Poe v. Hemingway et al						
APPEAL,CASREF,ECF Select the PDF document and any att	tachments.					
Main Document Browse Motion to Seal.pdf						
Attachments		Category		Desc	ription	
Attachments 1. Browse No file selected.		Category ~	•	Desc	ription	

Skip the "Return Date" screen unless the judge has a requirement in his or her Individual Practices to set a return date.



Skip the "Return Date" screens unless the judge has a requirement in his or her Individual Practices to set a return date.



Please review prior to submitting the entry to the CM/ECF system.

Warning: All summary docket text is visible to the public, as well as the PDF of the

motion to seal. Proceed with caution when entering sensitive information.



This is the last screen and you must click on the Next button to submit this entry to the

CM/ECF system.



The motion to seal has been submitted to the CM/ECF system. The Notice of Electronic Filing (NEF) is displayed. Remember the document number of your motion, you will need to enter the document number while filing your sealed document.



You will now electronically file your document under seal. For this training document we are using a Brief as our example. Please select the correct event that matches the document you will be filing under seal in the CM/ECF system.

Select the appropriate event from the CM/ECF system to be filed under seal.

CMmECF Civil - Criminal - Query Reports - Utilities - Search Help Log Out	
Other Documents	
Available Events (click to select an event) Selected Event	
AO 120 Form Patent/Trademark - Notice of Submission by Attorne AO 121 Form Copyright - Notice of Submission by Attorney Abstract of Judgment Fee Payment Amended Bill of Costs Notice of Taxation Amended Document (NOT Motion) Amicus Curiae Appearance Appendix Application for Letters Rogatory Bill of Costs Notice of Taxation Bill of Costs Notice of Taxation Withdrawn Bill of Costs Robjections Bill of Costs Reply Decid	
Case Opening Fee Payment	
Next Clear	

Type the case number and click Next.



Verify the case title and click Next.



The system prompts you with the question, Is this a sealed filing? Answer yes to this

question and click Next.



STOP

You have selected the option to file under seal. If this is not correct, go back to the previous screen and correct your choice.

ABOUT PUBLIC FILING vs. SEALED FILING

Documents filed in ECF are open to PUBLIC inspection by default. Documents may not be placed under seal or redacted without leave of the Court. (A Motion to Seal is not required for information redacted in accordance with Federal Rule of Civil Procedure 5.2(a).)

All Motions to Seal and Letter Motions to Seal must be electronically filed in public view.

You must electronically file a proposed sealed document <u>under seal</u> if:

• The INDIVIDUAL PRACTICES of the judge to whom the filing is directed require electronic filing under seal. (Where the Individual Practices do not expressly permit electronic filing under seal, the proposed sealed document must be submitted in the traditional manner, on paper.)

<u>and</u>

• A prior ORDER OF THE COURT permits filing under seal (no new motion necessary),

<u>or</u>

• A MOTION TO SEAL or LETTER MOTION TO SEAL is filed requesting permission to file under seal, (the Court will determine if the document(s) may remain under seal).

Steps to file a Motion to Seal:

- Electronically file all Motions or Letter Motions to Seal in public view on ECF.
- Electronically file any Affidavit or Declaration in Support of Motion in public view. (For information on redacting supporting documents see ECF Rule 6.8.)
- Electronically file the Proposed Sealed Document under seal only if the judges Individual Practices permit electronic filing.

CAUTION - When filing under seal the summary docket text, but not the document, will be open to public inspection and should not include information sought to be filed under seal.

PRO SE PARTIES are not permitted to electronically file under seal without express permission of the Court and, unless such permission is granted, must file any sealed document in the traditional manner, on paper.

The screen below is the information listed on the previous page.

CM CIVII - Criminal - Query Reports - Utilities - Search Help Log Out
Other Documents
<u>1:19-cv-00088-KPF-SN Poe v.</u> Hemingway et al
APPEAL,CASREF,ECF
STOP
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and
A prior ORDER OF THE COURT permits filing under seal (no new motion necessary),
<u>ar</u>
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Electronically file the Proposed Sealed Document under seal only if the judges Individual Practices permit electronic filing.
CAUTION - When filing under seal the summary docket text, but not the document, will be open to public inspection and should not include information sought to be filed under seal.
PRO SE PARTIES are not permitted to electronically file under seal without express permission of the Court and, unless such permission is granted, must file any sealed document in the traditional manner, on paper.
AUTHORITIES - Electronic filing under seal in ECF is governed by:
FED. R. CIV. P. 5.2 STANDING ORDER 19MISC583 The INDIVIDUAL PRACTICES of the presiding judge ECF RULES & INSTRUCTIONS
Next Cear

Review the different viewing levels for your document and select the appropriate viewing level. You have two choices:

Selected Parties – Access is restricted to the filing attorney, counsel for those parties selected by the filer and court personnel; or

Ex-Parte – Access is restricted to the attorney filing the document and court personnel.



The CM/ECF system will ask you to confirm the viewing level that you selected. Please review and confirm. If the viewing level is correct select Next. If the level is not correct, please return to the previous screen.



The viewing level selected was for "Selected Parties". You must now individually select the parties that should have access to the document being filed. Select the parties [Party] that will view the brief. Hold the Ctrl key (Command key in Mac) and use the mouse to select multiple party names and click Next.



Enter the document number for the motion that was filed requesting permission to file under seal or the order of the court the allows filing under seal.

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42								
Next Clear								

Attach your document(s) [PDF(s)] to the event.

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Select the PDF document and any attachments.										
Main Document Browse Brief.pdf										
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1. Browse No file selected.			~							
Next Clear										

Select the party filing [filer] the brief. Hold the Ctrl key (Command key in Mac) and use the mouse to select multiple filer names and click Next.

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If applicable, please use this to relate to any other document on the case.

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Other Documents								
<u>1:19-cv-00088-KPF-SN Poe v</u> <u>Hemingway et al</u>	<u>/.</u>							
APPEAL,CASREF,ECF								
Select the document to which this Brief relates to.								
□ Should the document you are filing link to another document in this case?								
Filed to								
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Review prior to submitting the entry to the CM/ECF system.



This is the last screen and you must click on the Next button to submit this entry to the CM/ECF system. Warning: All summary docket text is visible to the public, as well as the PDF of the motion to seal.



The brief has been submitted to the CM/ECF system. The Notice of Electronic Filing (NEF) is displayed.

