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SOUTHERN DISTRICT CIVIL PRACTICE ROUNDUP

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Springtime: Electronic Case Filing, New Disclosure-Statement Rule

THIS ARTICLE discusses two recent changes governing civil practice in the Southern District of New York. The first, and most significant, is that the district will be implementing an Electronic Case Filing system later this spring, which will require most documents in designated cases to be filed electronically.

The second change involves implementation of newly adopted Federal Rule of Civil Procedure 7.1, governing disclosure statements which nongovernmental corporate parties must file with the district court.

Electronic Case Filing

Whether we are ready for it or not, Electronic Case Filing (ECF) is about to arrive in the Southern District of New York. This system will require electronic filing of most court papers, which can be accomplished over the Internet, through submission to the clerk's office in a form prescribed by the clerk for input into the system, or, with permission from the judge, through submission of a paper document to the clerk's office for scanning into the system. For those who are not yet computer-literate, the transition is likely to be difficult, although the court has done its best to make the system user-friendly and to provide various forms of technical support. It is conducting hands-on training sessions at the courthouse and has provided an online training program through its Web site that walks the user, step by step, through most uses of the system. The court has also developed a Point of Contact (POC) program, which permits law offices to designate a liaison who will receive special training on the ECF system to provide in-house assistance and support, and who will facilitate communication with the court concerning ECF matters. Once the system is up



and running, the court will also operate a telephone helpline during business hours. But aside from mastery of the technical aspects of the system, even those who are computer-savvy will have to adjust their document preparation, filing and storage practices in order to comply with the court's new procedures.

The court anticipates a number of benefits from the program, including round-the-clock access to case files from any location; remote document filing; docketing as a by-product of electronic filing; electronic service; immediate notification of case activity via e-mail; and secure storage for documents in reduced space. The district is starting out slowly, applying electronic filing procedures only to newly filed cases and phasing in the program by groups of judges throughout the year. The first group includes all the Magistrate Judges, as well as Judges Batts, Briant, Conner, Kaplan, Koeltl, Martin, McMahon, Mukasey, Preska, Stein and Sweet.

Documents Subject to ECF?

The papers initiating any new civil action, including the summons and complaint, and the attendant affidavits of service, should be filed and served in the traditional manner, on paper and not electronically. Thereafter, if the case is assigned to the electronic filing system (a designation left to the assigned judge's discretion), the parties must provide the clerk with electronic copies of the initiating documents and must file

all subsequent documents electronically, except where the court directs otherwise. Social Security cases are the only type of case categorically excluded from the electronic filing program. Nonparty subpoenas in any type of civil case must be served in the traditional manner. Electronic filing should not be used for documents which are not to be filed with the court, such as deposition notices, interrogatories, document requests and responses thereto, and other materials described in Local Civil Rule 5.1. These documents should be served in the traditional manner.

Mechanics of Filing Electronically

- *Access to the System.* Anyone filing a document electronically must register as a "Filing User" of the court's system. The registration form is available on the court's Web site (www.nysd.uscourts.gov), and can be submitted online or printed out and delivered to the court by hand or mail. Attorneys admitted to practice before the Southern District of New York, including those admitted pro hac vice, as well as authorized attorneys for the U.S. government, will need to supply their name, address, telephone number and e-mail address, and a declaration that they are admitted to practice before the court or authorized to represent the United States. Pro se litigants may also become filing users, with the court's permission or at its direction, for the limited purposes of a particular action. Duly-registered filing users will each receive from the court, via e-mail, a user log-in name and password. The rules expressly require that each filing user agree, subject to sanctions, to protect the security of his or her password and to notify the court immediately in the event the password is compromised.

The court's Web site offers a detailed computer tour of the electronic filing system, explaining precisely how to access and use each of the components. As a general matter, access to the system is obtained through the court's Internet address. The opening page of that site contains a hyperlink to the electronic documents filing

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system, which then allows a filing user to log into the system using his or her assigned log-in name and password. Once in the system, users have a number of selections which permit them to file, review or search for a particular document.

- *Filing a Document Electronically.* To file a document, the document must be in PDF format (the computerized tour contains instructions on converting documents to PDF format, as well as a series of useful instructions on file organization and management, which facilitates easy retrieval when filing a document stored on a computer hard drive). The filing user filing a document in a civil case would select the "Civil" option from the Web site's menu, and then select the description of the type of document being filed (e.g., complaints, service documents, answers, motions and replies, ADR documents and trial documents). If the document is the initial document the filing user is submitting in a particular case, the system will ensure that the filing user is linked to the appropriate party.

- *Service.* Every filing user who appears on the civil cover sheet, or who subsequently appears in the action and who files a Request for Electronic Notification, will receive a Notice of Electronic Filing when a document is filed electronically. Transmission of this Notice constitutes service on all filing users. Although the Notice of Electronic Filing is automatically generated by the system, the court's procedures stress that it remains the attorney's responsibility to check the docket sheet regularly. Those attorneys or parties who are not filing users must be served with a paper copy of any document filed electronically, in accordance with the Federal Rules of Civil Procedure as well as the Local Rules. A filing user need not serve other filing users with a copy of the document that was electronically filed. Instead, an attorney who is a filing user representing a party in a particular case is entitled to one "free look" at documents filed on the system. There is a charge of 0.07 cents per page for subsequent access to a document. The public will also have access to all electronically filed documents in civil cases only, through the PACER system.

The electronic filing system has no impact on deadlines prescribed by the Federal Rules or by the court. A filing must be completed before midnight for it to be considered filed on a given day. An electronically filed document is deemed filed at the date and time stated on the Notice of Electronic Filing.

Any attachments and exhibits to an electronically filed document must also be filed in electronic form, which, in many cases, means that the documents will have to be scanned and converted to PDF format. In recent amendments to the procedures governing electronic filing, the court has authorized parties to move for permission to serve and file hard copies of documents that cannot reasonably be scanned. Filing attachments and exhibits is likely to be the most time-consuming

aspect of the electronic filing process, and the one that will require the biggest change in any attorney's motion practice because the rules implementing the electronic filing system specify that attachments and exhibits should be edited to include only material that is relevant to the matter under consideration by the court. The rules further provide that an attorney may supplement edited material in a timely fashion, so decisions concerning what material to include in an attached exhibit need not be set in stone. Nevertheless, parties submitting lengthy exhibits will have to give additional attention to selecting pertinent portions, and those responding should pay particular attention to whether material omitted from an attachment is particularly helpful and should be included with the response. Any excerpted material must be "clearly and prominently identified as such."

Documents to be filed under seal should not be filed electronically. Motions to file documents under seal should be made electronically, although such a motion may be made in paper form if it contains a statement of why it should not be filed electronically. The order granting such a motion

Documents requiring a judge's signature ... must be presented to the judge for an actual signature, after which the document will be scanned by the clerk's office and entered into the electronic filing system.

may be filed electronically, so long as a paper copy of the order attaching the documents to be sealed is also delivered to the clerk.

The Local and Federal Rules requiring signatures are unaffected by the electronic filing system, but do require special implementation. A filing user's log-in and password used to file a document electronically serve as the signature of the filing user and carry the full weight of a signature under the Local and Federal Rules, including Rule 11. Each document filed electronically must indicate on its face that it has been electronically filed, and the space where the signature would ordinarily appear must contain the name of the filing user under whose log-in and password the document is submitted, preceded by an "s/." A filing user may permit an authorized agent to submit documents using his or her log-in or password.

Sometimes a document, such as a stipulation or joint pretrial order, requires the signature of more than one party. In such cases, the document may be filed electronically either by submitting to

the clerk's office a scanned copy of the document containing all the necessary signatures; by representing the consent of all the parties whose signatures are required; or by listing the parties whose signatures are required and submitting a notice of endorsement of those parties within three business days of filing the document. The court may also prescribe a different method for filing documents requiring multiple signatures.

The rules governing electronic signatures impose certain document retention obligations on the filing user. Electronically filed documents (other than affidavits, declarations and proofs of service) requiring original signatures other than that of the filing user, must be maintained in paper form by the filing user for a year after all appeal periods expire. An affidavit, declaration or proof of service must be maintained in paper form by the filing user for a period of five years following the expiration of the time for appeal. The filing user must provide the court with original documents upon request.

Documents requiring a judge's signature are subject to a somewhat different procedure. Such documents must be presented to the judge for an actual signature, after which the signed document will be scanned by the clerk's office and entered into the electronic filing system. The manually signed document will also be filed by the clerk and represents the official court record in the event there is any discrepancy between the electronic and the paper document. In all other instances, the electronically filed document represents the official record and is binding upon the filing party.

The rules specifically provide that where a filing is made untimely as the result of a technical failure, the filing user may seek appropriate relief from the court.

Disclosure by Non-Governmental Corporate Parties. Newly adopted Federal Rule of Civil Procedure 7.1, which went into effect in December, requires any non-governmental corporate party to a proceeding in district court to file a disclosure statement identifying any parent corporation and any publicly held corporation owning 10 percent or more of its stock or stating that there is no such corporation. The Rule 7.1 statement must be filed in duplicate with the party's first appearance or filing in the case, and must be supplemented upon any change in the required information. In light of the new Federal Rule, the Southern District has repealed Local Rule 1.9, which required disclosure of similar information.

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