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AMERICAN IMMIGRATION COUNCIL

**PRACTICE ADVISORY**<sup>1</sup>

**ELECTRONIC FILING AND ACCESS TO ELECTRONIC FEDERAL COURT DOCUMENTS**

By the Legal Action Center  
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**I. INTRODUCTION**

This Practice Advisory explains the federal rules authorizing electronic filing in federal court; describes how to file documents in federal court using the Electronic Case Files (CM/ECF) System; and outlines how to access electronic documents through Public Access to Court Electronic Records (PACER). The advisory also clarifies some limitations to electronic access of documents in federal immigration cases.

**a. Quick Overview of the CM/ECF System and PACER**

PACER is a system designed to allow electronic access to U.S. District Court and U.S. Courts of Appeals case information. Through PACER, practitioners may access information about current and recently closed federal cases by entering case specific information such as a party name, case number or filing dates. A person does not have to represent a party in a case to gain access to information through PACER, but must maintain a PACER account and pay fees for downloading documents from the PACER site. Information about PACER is available at <http://www.pacer.gov/>. More detailed information about registering for and using PACER is also provided in Part III of this advisory.

CM/ECF is the federal courts' case management and electronic case files system. It allows courts to maintain case documents in electronic form, and it gives each court the option of permitting case documents to be filed electronically. To electronically file in each federal district court, a person must obtain a CM/ECF password for that individual district court. Each

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court maintains its own case information, as well as a court website, which may contain local rules.<sup>2</sup> Only one password is needed for filing in all courts of appeals.

A person does not need a PACER password in order to file a document in a district court or court of appeals case. However, if a party or attorney wishes 1) to view electronic documents filed in a case that is not their own case, or 2) to view documents after their free “look” through CM/ECF has expired, they must obtain a PACER password. General information about CM/ECF is available at <http://www.uscourts.gov/CourtRecords.aspx>. More detailed information about registering for and using CM/ECF is also provided in Part IV of this advisory.

## **II. RULES GOVERNING ELECTRONIC CASE MANAGEMENT AND FILING; PRIVACY AND REMOTE ACCESS**

Individual district courts and courts of appeals have court rules and a general set of procedures, available on individual court websites, that set forth the electronic filing practices of that court.<sup>3</sup> These individual court rules comply with rules found in the Federal Rules of Civil Procedure (FRCP) and the Federal Rules of Appellate Procedure (FRAP) governing electronic filing, privacy requirements, and limitations to remote access of electronic documents. The local court rules can be found on individual court websites. The applicable federal rules are set forth below.

### **a. Electronic Filing, Signatures, and Service**

#### **i. Filing and Signatures**

FRCP Rule 5(d)(3) governs electronic filing in district courts. It states that a court, by local rule, may allow papers to be filed, signed, or verified electronically, but that a local rule only may *require* electronic filing if reasonable exceptions are allowed. Rule 5(d)(3) also provides that, for purposes of FRCP, a paper filed electronically in compliance with a local rule is the equivalent of a written paper.

Many courts of appeals also require electronic filing pursuant to FRAP Rule 25(a)(D). Like FRCP Rule 5(d)(3), FRAP Rule 25(a)(D) states that a local rule only may require electronic filing if reasonable exceptions are allowed. For purposes of FRAP, a paper filed by electronic means in compliance with a local rule is the equivalent of a written paper.

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<sup>2</sup> The U.S. Courts website has a complete list of district courts and courts of appeals and their websites, [http://www.uscourts.gov/court\\_locator.aspx](http://www.uscourts.gov/court_locator.aspx).

<sup>3</sup> For a complete list of courts that 1) have implemented or are implementing the Case Management/Electronic Case Filing (CM/ECF) system and 2) information about whether a particular court requires electronic filing, visit the CM/ECF website, <http://www.pacer.gov/cmecf/ecfinfo.html>. It is important to note that many courts have made electronic filing mandatory. Electronic filing procedures are also discussed in greater detail in Part IV of this advisory.

ii. Service

The Civil and Appellate Rules also permit electronic service. FRCP Rule 5(b)(2)(E) provides that a document may be served electronically if the person to be served consented to electronic service in writing. However, under 5(b), service is not effective if the serving party learns that it did not reach the person to be served. FRAP Rule 25(c) allows service by electronic means in the courts of appeals with the similar requirement that the person to be served consented to electronic service in writing. FRAP Rule 25(c) also states that service is not effective if the serving party learns that the electronic document did not reach the person to be served.

**b. Additional Time to Act After Electronic Service**

FRCP Rule 6(d) of the Federal Rules of Civil Procedure allows three days to be added to the time period in which a party may or must act after service is made under FRCP Rule 5(b)(2)(E) (Electronic Service).<sup>4</sup> Thus, a party has three additional days to act if they are responding to an electronically filed document. These three days are added after the period would otherwise expire under Rule 6(a). In the courts of appeals, FRAP Rule 26(c) also provides that a responding party has an additional three days to respond to a document filed electronically.

**c. Rules Governing Privacy and Limiting Remote Access to Immigration Cases**

Amendments to FRCP 5.2 and FRAP 25 implement the privacy provision of section 205 of the E-Government Act of 2002 governing public access to electronic filings in federal court. These amendments became effective on December 1, 2007. In immigration cases, these rules specifically limit remote access to immigration case filings. *See* Memorandum from the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States to Chief Justice Roberts (Nov. 1, 2006), [http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/supct1106/summary\\_proposed\\_amend.pdf](http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/supct1106/summary_proposed_amend.pdf) (stating that Rule 5.2 implements the privacy provisions of the E-Government Act, limiting remote access to immigration electronic case filings due to “the prevalence of sensitive information in such cases and the volume of filings”).

FRCP Rule 5.2(c) limits remote access to electronic files, “[u]nless the court orders otherwise in an action or proceeding relating to an order of removal, to relief from removal, or to immigration benefits or detention.” Only parties and their attorneys may have remote electronic access to all parts of the case file, including the administrative record. Any other person may only have remote access to the docket maintained by the court, and an opinion, order, judgment, or other disposition of the court. However, any person may have electronic access to the full record at the courthouse. FRAP Rule 25 extends the FRCP 5.2(c) restrictions to immigration appellate cases.

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<sup>4</sup> *Custer v. Schumacher Racing Corp.*, 2008 U.S. Dist. LEXIS 9716, \*11-13 (S.D. Ind. Feb. 8, 2008). *But see McCray v. Peachey*, 2009 U.S. Dist. LEXIS 10401, \*10-11 (E.D. La. Feb. 2, 2009) (finding Rule 6(d) did not apply to extend time for filing a Rule 59 motion, because although judgment was electronic mailed, the period for filing a Rule 59 motion does not run from “service,” but runs from “entry of judgment”).

FRCP Rule 5.2(a) also implements privacy provisions of the E-Government Act, requiring certain information be redacted from court documents filed with the court. However, because immigration cases are not accessible by the public, they are not subject to Rule 5.2(a).<sup>5</sup>

Some courts that are restricting remote access have issued general orders explaining how they are implementing the privacy provisions of the E-Government Act. *See e.g.*, Administrative Order Regarding Electronic Filing in All Eighth Circuit Cases (May 29, 2007), <http://www.ca8.uscourts.gov/files/cmecfstandingorder.pdf> (explaining that in petitions for review in immigration cases, 1) the court clerk will restrict remote electronic public access to documents so that only the court's judges and staff and the parties and attorneys in the case may access them electronically, however 2) no restrictions will be placed on remote electronic public access to the court's *orders* and *opinions* in immigration cases); General Order 08-02, Authorizing Electronic Filing in the District Court for the Central District of California (Feb. 7, 2008), [http://www.cacd.uscourts.gov/CACD/GenOrders.nsf/0/33293c5e9531578e882573e900613b62/\\$FILE/GO%2008-02.pdf](http://www.cacd.uscourts.gov/CACD/GenOrders.nsf/0/33293c5e9531578e882573e900613b62/$FILE/GO%2008-02.pdf) (same).

Despite the implementation of these privacy provisions, many district courts do not appear to be uniformly restricting access to documents filed in immigration cases and many documents, other than court-generated documents, are accessible through PACER.

### III. ACCESS TO CASE FILINGS

#### a. **Access to Court Documents: The Public Access to Court Electronic Records (PACER) Program**

After completing a registration process, any person may view and retrieve case filings through PACER - an electronic public access system designed by the United States Courts for online access to district court and courts of appeals cases. As mentioned, certain restrictions may limit a person's ability to access documents in immigration cases, but when a document is accessible, PACER allows a person to view, print and download the document.

Each court has its own computer system and case information database, so the appearance of the information online may vary depending on the jurisdiction. A PACER account does not entitle a person to file documents in a case. As described in Part IV of the advisory, a CM/ECF account is required for electronic filing. For a thorough explanation of PACER features, see the PACER manual, <http://www.pacer.gov/documents/pacermanual.pdf>.

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<sup>5</sup> Rule 5.2(a) requires that, unless the court states otherwise, personal identification information be redacted from documents filed with the court — social-security and taxpayer-identification numbers, birthdates, names of minor children, and financial-account numbers. Rule 5.2(b) provides certain exemptions from the redaction requirement. One of these exemptions is any case that is covered by FRCP 5.2(c), the rule limiting the ability of a person to view an electronic document in an immigration case. Therefore, the redaction requirements of Rule 5.2(a) do not apply to immigration cases.

## **b. PACER Registration and Use; Fees**

### **i. Registration and Use**

In order to obtain a PACER login and password, a user must complete the on-line PACER Registration Form, <http://www.pacer.gov/register.html>. Once the registration has been processed, a login and password can be retrieved online. If a firm registers for a PACER account, different members of the firm may access documents. However, if the firm prefers to keep individual billing separate, each PACER user must have a separate account.

After registering for PACER, a person may use different search criteria to locate a case and access documents filed in that case. To locate a case, a person must have at least a party name, a case number, or a Nature of Suit (NOS) code.<sup>6</sup> Other fields, such as date range or region, are optional and are provided to limit a search. Explanations of the different criteria used to locate a case may be found in the PACER User Manual, <http://www.pacer.gov/documents/pacermanual.pdf>.

After entering login information and the case-specific information necessary to locate a case, a user may search the desired case docket. To access a particular document, it is necessary to click on the document. The next screen will display information regarding the number of billable pages and the related cost. A user can also click on the bullet next to the document for an abbreviated description of the document before accessing the document and incurring a charge.

### **ii. Fees**

The U.S. Federal Courts charge user fees for electronic access to case information.<sup>7</sup> Each page of a document accessed through PACER costs \$.08. PACER charges are based on the results of a search, including a search that yields no matches – a search with no matches results in a bill for one page.

Before incurring a charge to view a document, a user must click on the ‘View Document’ button. There is currently a cap of \$2.40 (30 pages) for a single document or case specific report including docket sheets. PACER users may enter different client codes during each PACER log-in, and are billed on a quarterly basis for transactions. For more information about fees and how they are assessed, see the PACER manual, <http://www.pacer.gov/documents/pacermanual.pdf>.

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<sup>6</sup> To view a list of all NOS codes, visit “PACER Documents” at <http://pacer.psc.uscourts.gov>.

<sup>7</sup> A party or attorney in a case who registers to file electronically in a district court or court of appeals through the CM/ECF Program, can access a court document one time for free after receiving an EM/ECF filing notice. See Part IV of this advisory.

#### IV. ELECTRONIC CASE MANAGEMENT AND FILING

##### a. Electronic Case Management: Overview of the Case Management and Electronic Case Files (CM/ECF) System

Many federal courts now require electronic filing through CM/ECF, the federal judiciary's electronic case management system. CM/ECF allows courts to maintain court documents in electronic form, provides access to these documents over the Internet, and gives the option for electronic filing. District courts began implementing CM/ECF in 2002. Courts of appeals began implementing the system in 2004.<sup>8</sup> A PACER account is not required to use the CM/ECF system. However, a CM/ECF user will only receive one free "look" at a court document filed in a case (which can be downloaded and saved), and thereafter, must use PACER to access the document.

##### b. CM/ECF Registration and Use; Electronic Notices; and Fees

###### i. Registration and Use

Each district court has its own requirements and procedures for registering with CM/ECF which are available on individual court websites.<sup>9</sup> The list provides links to each district court's website with court-specific information about what steps a person must take to register for CM/ECF, filing requirements and procedures, electronic filing trainings, and manuals.

Generally, in order for an attorney to be authorized to file documents electronically and to receive e-mail notices of documents that are filed, he or she must be admitted to practice in that particular court and be registered to file electronically with the specific court providing the CM/ECF system.

Appellate courts have a streamlined process for registering for CM/ECF. It is possible to register for a CM/ECF filing ID in one or more appellate courts by completing the registration form on the CM/ECF website: <https://www.pacer.gov/psco/cgi-bin/cmecf/ea-regform.pl>. A person who already has registered to file case documents at one court of appeals can register at additional courts of appeals by updating his or her account information on the CM/ECF website: <https://www.pacer.gov/psco/cgi-bin/cmecf/ea-login.pl>. Electronic training modules are available on this website for appellate CM/ECF: <http://www.pacer.gov/ecfcbt/ap/>.

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<sup>8</sup> Brochure describing CM/ECF and PACER, available at [http://www.pacer.gov/documents/pacer\\_brochure.pdf](http://www.pacer.gov/documents/pacer_brochure.pdf)

<sup>9</sup> The CM/ECF website provides a list of courts that have implemented or are implementing the CM/ECF system, <http://www.pacer.gov/cmecf/ecfinfo.html>; the U.S. Courts Website provides a complete list of district courts and courts of appeals and their websites, [http://www.uscourts.gov/court\\_locator.aspx](http://www.uscourts.gov/court_locator.aspx).

After registering with the court, a person receives an identification name and password that will allow him or her to file electronically. This identification name and password will also serve as the lawyer's signature on electronic documents for purposes of FRCP Rule 11.

ii. Electronic Notice and Fees

After filing a document, an attorney of record will receive a Notice of Electronic Filing with a hyperlink to the filed document. Each attorney of record receives one free "look" at this document and any secondary address listed under the e-mail information screen also receives a free copy. An attorney may also list multiple e-mail addresses for their filer login so that other parties can be notified of filings. Once a person has accessed a document using the hyperlink in the notice of filing, the hyperlink to access the document will not work a second time. Thereafter, a user will then be asked for a PACER login and will be charged to view the document. The first user to access the hyperlink can print or save the document during the initial viewing period in order to avoid future charges. The initial viewing period is 15 days – after 15 days, the hyperlink will expire. For more information about accessing filed documents, see CM/ECF website, Frequently Asked Questions, <http://www.pacer.gov/psc/efaq.html#CMECF>.

For help using CM/ECF, visit the PACER Service Center web site at <http://www.pacer.gov/>, send email to the PACER Service Center at [pacer@psc.uscourts.gov](mailto:pacer@psc.uscourts.gov) or call (800) 676-6856 between 8 a.m. and 6 p.m. Central Time.

**V. QUICK GUIDE TO HELPFUL SITES**

- PACER Service Center homepage: <http://www.pacer.gov/>
- CM/ECF homepage: <http://www.pacer.gov/cmecf/>
- CM/ECF Frequently Asked Questions: <http://www.pacer.gov/psc/efaq.html#CMECF>
- CM/ECF Registration for Appellate Courts: <https://www.pacer.gov/psco/cgi-bin/cmecf/ea-regform.pl>
- Links to individual district courts where lawyers may access information about registering for CM/ECF: <http://www.pacer.gov/cmecf/ecfinfo.html>
- U.S. Courts Website for complete list of district courts and courts of appeals and their websites: [http://www.uscourts.gov/court\\_locator.aspx](http://www.uscourts.gov/court_locator.aspx)