

# UNITED STATES JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

## ELECTRONIC CASE FILING ADMINISTRATIVE POLICIES AND PROCEDURES

### 1. DEFINITIONS.

- 1.1 “**ELECTRONIC FILING SYSTEM**” (**ECF**) refers to the United States Judicial Panel on Multidistrict Litigation’s (the Panel’s) automated system that receives and stores documents filed in electronic form. The program is part of the CM/ECF (Case Management/Electronic Case Files) software which was developed for the Federal Judiciary by the Administrative Office of the United States Courts.
- 1.2 “**CLERK OF THE PANEL**” means the official appointed by the Panel to act as Clerk of the Panel and shall include those deputized by the Clerk of the Panel to perform or assist in the performance of the duties of the Clerk of the Panel.
- 1.3 “**FILING USER**” is an individual who has a Panel-issued login and password to file documents electronically. In accordance with Rule 1.4 of the Rules of Procedure of the United States Judicial Panel on Multidistrict Litigation (the Panel Rules), every member in good standing of the Bar of any district court of the United States is entitled to practice before the Judicial Panel on Multidistrict Litigation.
- 1.4 “**NOTICE OF ELECTRONIC FILING**” (**NEF**) is a notice automatically generated by the Electronic Filing System at the time a document is filed with the system, setting forth the time of filing, the date the document is entered on the docket, the name of the party and attorney filing the document, the type of document, the text of the docket entry, the name of the party and/or attorney receiving the notice, and an electronic link (hyperlink) to the filed document, which allows recipients to retrieve the document automatically. A document shall not be considered filed for the purposes of the Panel’s Rules until the filing party receives a system generated Notice of Electronic Filing with a hyperlink to the electronically filed document.
- 1.5 “**PACER**” (**Public Access to Court Electronic Records**) is an automated system that allows an individual to view, print and download Panel docket information over the Internet.
- 1.6 “**PDF**” (**Portable Document Format**). A document file created with a word processor, or a paper document which has been scanned, must be converted to portable document format to be filed electronically with the Panel. Converted files contain the extension “.pdf”.

1.7 “**TECHNICAL FAILURE**” is defined as a failure of Panel owned/leased hardware, software, and/or telecommunications facility which results in the inability of a Filing User to submit a filing electronically. Technical failure does not include malfunctioning of a Filing User’s equipment.

2. **SCOPE OF ELECTRONIC FILING.**

- (a) All multidistrict litigation matters (MDLs) brought before the Panel under 28 U.S.C. § 1407 shall be assigned to the Electronic Filing System. Effective October 1, 2010, all MDLs, proceedings, motions, memoranda of law and other pleadings or documents filed with the Panel in new and existing dockets must be filed using CM/ECF unless otherwise specified herein.
- (b) The filing of all MDL papers shall be accomplished electronically under procedures outlined in the Panel’s CM/ECF User Manual.
- (c) A party proceeding *pro se* shall not file electronically, unless otherwise permitted by the Panel. *Pro se* filers shall file paper originals of all documents. The clerk’s office will scan these original documents into the JPML’s electronic system, unless otherwise sealed.

3. **ELIGIBILITY, REGISTRATION, PASSWORDS.**

- (a) Any attorney admitted to the Bar of any United States district court is eligible to practice before the Panel. Unless otherwise exempt as set forth herein, to become a Filing User, an attorney must register as a Filing User by completing the prescribed registration form and submitting it to the Clerk of the Panel.
- (b) Registration as a Filing User constitutes consent to electronic service of all documents filed with or issued by the Panel in accordance with the Panel Rules.
- (c) By submitting the online registration form, the Filing Users certify that they have read and are familiar with the Panel Rules and these administrative policies and procedures governing electronic filing and the method of training in the System used prior to becoming a Filing User. Filing users must also have a PACER account. An individual may register more than one Internet email address. The clerk’s office will email the login and password to the attorney.
- (d) Once the registration is processed by the clerk, the Filing User shall protect the security of the User password and immediately notify the clerk if the Filing User learns that the password has been compromised. Filing Users may be subject to sanctions for failure to comply with this provision. After registering, attorneys may change their passwords. If an attorney comes to believe that the security of an existing password has been compromised and that a threat to the System exists, the attorney must change his or her password immediately.

- (e) Exemptions from mandatory electronic filing may be granted upon submission of a written request to the clerk. The written request shall include a supporting affidavit showing a substantial undue hardship. Final authority to grant such request is vested in the Clerk of the Panel or his/her designee.
- (f)(1) Each attorney is responsible for keeping his/her contact information up to date. If an attorney is leaving a law firm and is the attorney of record on an existing case and representation in the case will remain with the law firm, withdrawal and substitution of counsel must be made prior to the attorney's termination in the law firm, for the following reason:

The attorney leaving the firm has an email address with the law firm he or she is leaving on record with the Panel. This email address may be disabled by the law firm as soon as the attorney terminates his/her employment. The electronic notices in CM/ECF will continue to go to the terminated attorney's email address at the former firm. If the email address is disabled at the law firm, the attorney will not receive the electronic notice. If a withdrawal/substitution of counsel has not been filed prior to the attorney leaving the firm, the law firm should not disable the email account of the attorney leaving the firm until another attorney in the firm enters his/her appearance. The law firm should designate someone in the firm to check this email account for CM/ECF notices until substitution of counsel has been filed with the Panel.

- (2) If the attorney leaving the firm is taking active cases from the firm, the attorney needs to change his/her email address as soon as possible, otherwise the attorney will not receive electronic notices from CM/ECF. The email will continue to be sent to the former law firm's email address still on record. Procedures for changing an email address may be found in the Panel's CM/ECF User Manual.

#### **4. ELECTRONIC FILING AND SERVICE OF DOCUMENTS.**

- (a) Electronic transmission of a document to the Electronic Filing System in accordance with these procedures, together with the transmission of a (System) Notice of Electronic Filing from the Panel with a hyperlink to the electronically filed document, constitutes filing of the document for all purposes of the Panel Rules of Procedure.
- (b) Emailing a document to the clerk's office does not constitute filing the document. A document shall not be considered filed until the System generates a Notice of Electronic Filing (NEF) with a hyperlink to the electronically filed document.
- (c) Before filing a scanned document with the court, a Filing User must verify its legibility.
- (d) When a document has been filed electronically, the official record of that

document is the electronic recording as stored by the Panel and the filing party is bound by the document as filed. A document filed electronically is deemed filed on the date and time stated on the Notice of Electronic Filing (NEF) from the Panel.

- (e) Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight, **EASTERN TIME**, in order to be considered timely filed that day. However, if time of day is of the essence, the Clerk of the Panel may order a document filed by a certain time.
- (f) Upon the filing of a document, a docket entry will be created using the information provided by the Filing User. The clerk will, where necessary and appropriate, modify the docket entry description to comply with quality control standards. In the event a Filing User electronically files a document in the wrong MDL or associated civil action, or the incorrect PDF document is attached, the Clerk of the Panel, or his/her designee, shall be authorized to strike the document from the record. A notice of the action striking a document from the record shall be served on all parties in the case.
- (g) By participating in the electronic filing process, the parties consent to the electronic service of all documents, and shall make available electronic mail addresses for service. Upon the filing of a document by a Filing User, a Notice of Electronic Filing (NEF), with a hyperlink to the electronic document and an email message will be automatically generated by the electronic filing system, and sent via electronic mail to the email addresses of all parties who have registered in the MDL. In addition to receiving email notifications of filing activity, the Filing User is strongly encouraged to sign on to the electronic filing system at regular intervals to check the docket in his/her MDL and/or civil action.
- (h) If the filing of an electronically submitted document requires leave of the Panel, such as a request to file out-of-time, the attorney shall attach the proposed document as an attachment to the motion requesting leave to file. If the Clerk of the Panel grants the motion, the document will be electronically filed without further action by the Filing User.
- (i) A certificate of service must be included with all documents filed electronically. Such certificate shall indicate that service was accomplished pursuant to the Panel's electronic filing procedures. Service by electronic mail shall constitute service pursuant to Panel Rule 5.2.

A party who is not a registered CM/ECF participant with any United States federal court is entitled to a paper copy of any electronically filed pleading, document, or order pursuant to Panel Rule 5.1.1.(b). The filing party must therefore provide the non-registered attorney or party, including a terminated party or attorney, if appropriate, with the pleading, document, or order pursuant to Panel

Rule 5.2. Under the Rule, they can be served with a paper copy of the electronically filed document, or they can consent in writing to service by any other method, including other forms of electronic service such as fax or direct email.

The following is a suggested certificate of service for electronic filing:

### **CERTIFICATE OF SERVICE**

On [Date], I electronically filed this document through the CM/ECF system, which will send a notice of electronic filing to: [Attorney Name (attach list if necessary)];

and I [mailed] [hand delivered] [faxed] this document and the notice of electronic filing to: [Attorney/Party Name], [Address], [Parties Represented], [Civil Action(s)] (attach list if necessary).

/s/ [typed name of attorney] \_\_\_\_\_

Attorney's name

Law Firm Name (if applicable)

Address

Phone Number

Fax Number

Attorney's Email address

Attorney for:

### **5. ENTRY OF PANEL DOCUMENTS.**

- (a) A document entered or issued by the Panel will be filed in accordance with these procedures and such filing shall constitute entry on the docket kept by the Clerk.
- (b) All signed orders will be electronically filed or entered. An order containing the electronic signature of a Panel Judge or the Clerk of the Panel shall have the same force and effect as if the Panel Judge or Clerk of the Panel had affixed a signature to a paper copy of the order and the order had been entered on the docket in a conventional manner.
- (c) Orders may also be issued as "text-only" entries on the docket, without an attached document. Such orders are official and binding.

### **6. NOTICE OF PANEL ORDERS AND NOTICES.**

Immediately upon the entry of an order or notice by the Panel, the clerk will transmit to Filing Users in affected cases in the MDL, in electronic form, a Notice of Electronic Filing (NEF), with a hyperlink to the electronic document. Electronic transmission of the

NEF, along with a hyperlink to the electronic document, constitutes the notice required by Panel Rule 5.2. The clerk must give notice in paper form to a *pro se* party or an attorney who is not a Filing User to the extent notice is required.

**7. ATTACHMENTS AND EXHIBITS.**

Documents referenced as exhibits or attachments shall be filed in accordance with these administrative policies and procedures and the Panel's CM/ECF User Manual, unless otherwise ordered by the Panel. A Filing User shall submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by the Panel. Excerpted material must be clearly and prominently identified as such. Filing Users who file excerpts of documents as exhibits or attachments under these procedures do so without prejudice to their right to file timely additional excerpts or the complete document. Responding parties may timely file additional excerpts or the complete document that they believe are directly germane. The Panel may require parties to file additional excerpts or the complete document.

**8. SEALED DOCUMENTS.**

To ensure proper storage of a document, a document subject to a sealing order must be filed with the Panel on paper in a sealed envelope marked "sealed", citing thereon the MDL docket number and title and the associated case caption and case number; or by attaching thereto a paper copy of the Panel's order sealing the document or a copy of the NEF citing the entry of the court's order sealing the document. The clerk may require the document to be accompanied by a disk or CD-ROM containing the document in .pdf format. Only a motion to file a document under seal may be filed electronically, unless prohibited by law. The order of the Panel authorizing the filing of documents under seal may be filed electronically, unless prohibited by law or otherwise directed by the Panel. If a document is filed under seal pursuant to the E-Government Act of 2002, the filing party is nevertheless required to file a redacted copy for the public record along with the unredacted sealed document.

**9. SPECIAL FILING REQUIREMENTS AND EXCEPTIONS.**

9.1 Special Filing Requirements

The documents listed below shall be presented for filing on paper. The clerk may require the document be accompanied by a disk or CD-ROM containing the document in .pdf format:

Sealed  
MDL dockets involving Qui Tam Cases (under seal)

9.2 Exceptions

All documents shall be filed electronically unless otherwise ordered by the Panel or specifically exempt herein.

**10. RETENTION REQUIREMENTS.**

- (a) A document that is electronically filed and requires an original signature other than that of the Filing User must be maintained in paper form by counsel and/or the firm representing the party on whose behalf the document was filed until one year after all periods for appeals expire. On request of the Panel, said counsel must provide the original document for review.
- (b) The clerk's office may choose to discard certain documents brought to the clerk's office for filing in paper form after those documents are scanned and uploaded to the System (to include *pro se* filings). Therefore, counsel and *pro se* filers shall provide the Panel with a copy of the original documents with intrinsic value for scanning and maintain the original signature in accordance with 10(a).

**11. SIGNATURES.**

- (a) The user login and password required to submit documents to the Electronic Filing System serve as the Filing User signature on all electronic documents filed with the court. They serve as a signature for purposes of the Panel Rules and any other purpose for which a signature is required in connection with proceedings before the Panel.
- (b) Each document filed electronically must indicate in the caption that it has been electronically filed. An electronically filed document must include a signature block in compliance with Panel Rule 7.1(e), and must set forth the name, address, telephone number, fax number, and email address. In addition, the name of the Filing User under whose login and password the document is submitted must be preceded by an "/s/" and typed in the space where the signature would otherwise appear. No Filing User or other person may knowingly permit or cause to permit a Filing User password to be used by anyone other than an authorized agent of the Filing User.
- (c) A document requiring signatures of more than one party must be filed either by:
  - (1) electronically filing a scanned document containing all necessary signatures; or
  - (2) representing the consent of the other parties on the document; or
  - (3) identifying on the document the party whose signature is required and by the submission of a notice of endorsement by the other parties no later than three (3) business days after filing; or
  - (4) any other manner approved by the Panel.
- (d) A non-filing signatory or party who disputes the authenticity of an electronically filed document with a non-attorney signature, or the authenticity of the signature on that document; or the authenticity of an electronically filed document containing multiple signatures or the authenticity of the signature themselves,

must file an objection to the document within fourteen (14) days of service of the document.

- (e) Any party challenging the authenticity of an electronically filed document or the attorney's signature on that document must file an objection to the document within fourteen (14) days of service of the document.
- (f) If a party wishes to challenge the authenticity of an electronically filed document or signature after the fourteen (14) day period, the party shall file a motion to seek a ruling from the Panel.

## **12. SERVICE OF DOCUMENTS BY ELECTRONIC MEANS.**

### **12.1 Service**

#### **12.1.1 Filing User**

Upon the electronic filing of a pleading or other document, the Panel's Electronic Case Filing System will automatically generate and send a Notice of Electronic Filing (NEF) to all Filing Users associated with that MDL and/or associated cases, along with a hyperlink to the electronic document. Transmission of the Notice of Electronic Filing with a hyperlink to the electronic document constitutes service of the filed document.

The NEF must include the time of filing, the date the document was entered on the docket, the name of the party and attorney filing the document, the type of document, the text of the docket entry, and an electronic link (hyperlink) to the filed document, allowing anyone receiving the notice by email to retrieve the document automatically. If the Filing User becomes aware that the NEF was not transmitted successfully to a party, or that the notice is deficient, *i.e.*, the electronic link to the document is defective, the filer shall serve the electronically filed document by email, hand, facsimile, or by first-class mail postage prepaid immediately upon notification of the NEF deficiency.

#### **12.1.2 Individual who is not a Filing User**

A non-registered participant is entitled to receive a paper copy of any electronically filed document from the party making such filing. Service of such paper copy must be made according to the Panel Rules.

## **13. TECHNICAL FAILURES.**

- (a) If the site is unable to accept filings continuously or intermittently for more than one (1) hour occurring after 12:00 noon Eastern Time that day, the Clerk of the Panel shall deem the Panel's Electronic Case Filing web site to be subject to a



technical failure.

- (b) If a Filing User experiences a technical failure as defined herein, the Filing User may submit the document to the Clerk of the Panel, provided that the document is accompanied by a certification, signed by the Filing User, that the Filing User has attempted to file the document electronically at least twice, with those unsuccessful attempts occurring at least one (1) hour apart after 12:00 noon Eastern Time that day. The Clerk may require the document to be accompanied by a disk or CD-Rom which contains the document in .pdf format.
- (c) The initial point of contact for a Filing User experiencing technical difficulty filing a document electronically will be the Panel's CM/ECF Help Desk at the numbers listed on the Panel's web site and in the CM/ECF User Manual.
- (d) A Filing User who suffers prejudice as a result of a technical failure as defined herein or a Filing User who cannot file a time-sensitive document electronically due to unforeseen technical difficulties, such as the malfunctioning of a Filing User's equipment, may seek relief from the Clerk of the Panel.

#### **14. PUBLIC ACCESS.**

- 14.1 (a) A person may receive information from the Electronic Filing System at the Panel's Internet site by obtaining a PACER login and password. A person who has PACER access may retrieve docket sheets and documents (unless otherwise sealed or restricted) in MDL dockets and associated civil cases. Any case or document under seal shall not be available electronically or through any other means.
- (b) If a case or document has been restricted, a PACER user may retrieve the docket sheet over the Internet, but only a Filing User who is counsel of record may retrieve restricted documents electronically. However, a restricted case or document will be available for viewing by the public at the clerk's office.
- (c) Electronic access to electronic docket sheets and all documents filed in the System, unless sealed, is available to the public for viewing at no charge during regular business hours at the clerk's office. A copy fee for an electronic reproduction is required in accordance with 28 U.S.C. §1932.
- (d) Conventional copies and certified copies of electronically filed documents may be purchased at the clerk's office. The fee for copying and certifying will be in accordance with 28 U.S.C. §1932.

#### **14.2 Sensitive Information**

Since the public may access certain case information over the Internet through the

Panel's Electronic Filing System, sensitive information should not be included in any document filed with the court unless such inclusion is necessary and relevant. In accordance with these Administrative Policies and Procedures, if sensitive information must be included, certain personal and identifying information such as Social Security numbers, financial account numbers, dates of birth and names of minor children shall be redacted from the pleading, whether it is filed electronically or on paper.

The Panel recognizes that parties may need to include in the record a document containing information such as driver's license number; medical records, treatment and diagnosis; employment history; individual financial information; and proprietary or trade secret information.

To avoid unnecessary disclosure of private, personal or financial information, a party may:

(a) **RESTRICTED MDL DOCKETS OR DOCUMENTS.**

File a "Motion to Seal" or "Motion to Seal Document". The motion must state the reason and show good cause for restricting remote access to the case. If the motion is granted, remote access to documents will be limited to Filing Users who are counsel of record. However, the MDL docket sheet and/or documents will be available for viewing by the public at the clerk's office.

(b) **EXHIBITS.**

File an exhibit containing private, personal or financial information as an attachment to a pleading entitled "Notice of Filing Restricted Exhibit". The notice and the attached exhibit shall be filed as a separate docket entry, rather than as an attachment to the pleading supported by the exhibit. Remote public access to the notice and exhibit will be limited to Filing Users who are counsel of record. The notice and exhibit will, however, be available for viewing by the public at the clerk's office.

(c) **DOCUMENTS UNDER SEAL.**

(1) File a redacted copy of a pleading or exhibit containing private, personal or financial information, whether electronically or on paper, while concurrently filing an unredacted copy under seal. This document shall be retained by the Panel as part of the record.

**OR**

(2) File a reference list under seal. The reference list shall contain the complete personal data identifier(s) and the redacted identifier(s)

used in its (their) place in the filing. All references in the case to the redacted identifier(s) included in the reference list will be construed to refer to the corresponding complete identifier. The reference list must be filed under seal, and may be amended as of right. It shall be retained by the Panel as part of the record.

(d) **MOTION TO SEAL.**

File a motion to seal the document or MDL associated case. The motion must state the reason and show good cause for sealing the document or MDL associated case. If the motion to seal is granted, the document or case under seal will not be available electronically or through any other means.

**It is the sole responsibility of counsel and the parties to ensure that all documents filed with the Panel comply with these Administrative Policies and Procedures, regarding public access to electronic case files. The Clerk will not review any document for redaction.**

Counsel are strongly urged to share this information with all clients so that an informed decision about the inclusion, redaction, and/or exclusion of certain materials may be made.