



**United States District Court
Southern District Of New York**

Colleen McMahon
Chief Judge

Ruby J. Krajick
Clerk of Court

NOTICE TO THE BAR

CONTACT:

December 19, 2019

Help Desk, 212-805-0136

SDNY Announces Introduction of Sealed Filing in ECF

The United States District Court for the Southern District of New York announces the introduction of electronic filing under seal through the court's Electronic Case Filing (ECF) system.

Effective February 3, 2020, attorneys seeking to file under seal in a publicly filed civil or miscellaneous case before a judge whose Individual Practices permit electronic filing under seal shall electronically file the proposed sealed document through the ECF system. A filing under seal must be preceded by either a motion or letter motion to seal, or an order of the Court permitting filing under seal.

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

Filing parties must conform to the procedures for electronic filing under seal found in the court's Standing Order and revised ECF Rules & Instructions (see attached).

Three further revisions to the ECF Rules & Instructions concern (1) a clarification of attorney admission procedures in Multi-District Litigation cases; (2) a revised procedure for requesting assistance with a filing error; and (3) a new requirement for documents filed on the ECF system to be in text searchable format, excluding exhibits.

The ECF Rules and Instructions, and further guidance regarding the above changes, may be found at <https://nysd.uscourts.gov/electronic-case-filing>.

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**500 Pearl Street, New York, NY 10007
300 Quarropas Street, White Plains, NY 10601**

<https://www.nysd.uscourts.gov/>

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

STANDING
ORDER

ELECTRONIC FILING UNDER SEAL
IN CIVIL AND MISCELLANEOUS CASES

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The District Court's Electronic Case Filing (ECF) system having been modified to allow sealed documents to be filed electronically in publicly filed civil and miscellaneous cases by attorneys admitted to the bar of this court who are registered Filing Users of the ECF system and attorneys seeking admission *pro hac vice*, unless otherwise ordered by the court it is hereby

ORDERED, effective February 3, 2020, and subject to the exceptions outlined below, attorneys seeking permission to file under seal in a publicly filed civil or miscellaneous case shall electronically file a Motion or Letter Motion to Seal through the court's ECF system.

The judge to whom the filing is directed may require that, in addition to the Motion or Letter Motion to Seal, the proposed sealed document shall also be filed electronically through the ECF system, and shall so indicate in his or her [Individual Practices](#). Where the Individual Practices do not expressly permit electronic filing under seal, the proposed sealed document shall be submitted in the traditional manner, on paper.

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 particular document should not be electronically filed, must move for leave of the Court to file in the traditional manner, on paper.

The ability to electronically file under seal does not enlarge the class of documents that may be filed under seal in accordance with Federal Rule of Civil Procedure 5.2. The filing party must demonstrate that the interest to be protected by filing under seal outweighs the presumption of public access. Stipulations between the parties and confidentiality agreements are insufficient alone to warrant restricted access.

Filing parties shall conform to the procedures for electronic filing under seal found in the court's Electronic Case Filing Rules & Instructions, as updated periodically (see attached).

The court's Electronic Case Filing Rules & Instructions and further guidance regarding electronic filing under seal may be found at www.nysd.uscourts.gov/ecf.

SO ORDERED.

Dated: December 19, 2019
New York, NY



Colleen McMahon
Chief Judge

U.S. District Court, Southern District of New York
Revisions to Electronic Case Filing Rules & Instructions
Effective February 3, 2020

Sealed Filing in ECF

Section 6. Filing Under Seal and Redacting in Civil and Miscellaneous Cases

6.1 Do I need permission to file under seal or redact?

Yes. Documents may not be placed under seal or redacted without leave of the Court. A filing under seal must be preceded by either a Motion to Seal, a Letter Motion to Seal or an Order of the Court permitting filing under seal. (A Motion to Seal is not required for information redacted in accordance with Federal Rule of Civil Procedure 5.2(a).)

6.2 Is electronic filing under seal in ECF limited to publicly filed civil and miscellaneous cases?

Yes. Electronic filing under seal is limited to publicly filed civil and miscellaneous cases, and is not permitted in cases sealed in their entirety, or in criminal cases.

6.3 Must all Motions/Letter Motions to Seal or Redact be electronically filed in ECF?

Yes. All Motions to Seal and Letter Motions to Seal or Redact must be electronically filed through the ECF system.

6.4 Must all proposed sealed documents be electronically filed in ECF?

Consult the judge's Individual Practices to determine if, in addition to the motion, the proposed sealed document must also be electronically filed on the ECF system. Where the Individual Practices do not expressly permit the electronic filing under seal of the proposed sealed document, or are silent on the subject, the proposed sealed document shall be submitted in the traditional manner, on paper.

6.5 In brief, how do I electronically file a Motion to Seal or Redact?

- (a) Electronically file a Motion or Letter Motion to Seal in public view on the court's ECF system. The motion must identify the Viewing Level to be applied to the proposed sealed document. (For information on Viewing Levels see 6.9.)
- (b) Electronically file any Affidavit or Declaration in Support of Motion in public view and electronically relate it to the motion. (For information on redacting supporting documents see 6.8.)
- (c) Electronically file the proposed sealed document under seal using a restricted Viewing Level in ECF, and electronically relate it to the motion.

6.6 How do I electronically file documents in support of a Motion to Seal or Redact?

Documents filed in support of a Motion to Seal or Redact must be filed separately from the motion, not as attachments to the motion, and each must be electronically related to the motion. Supporting papers may be filed under seal or redacted only to the extent necessary to safeguard information sought to be filed under seal (see 6.8).

6.7 How do I electronically file a proposed sealed document?

Contemporaneous with the filing of the Motion to Seal/Letter Motion to Seal, the proposed sealed document must be separately filed using a restricted Viewing Level selected by the filer from the list below, and it must be electronically related to the motion.

6.8 How do I electronically file a redacted document?

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. Both documents must be electronically related to the motion. In the publicly filed entry use the word “Redacted” in the title of the document and in the summary docket text. 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.

6.9 What are Viewing Levels, and how can I limit access to a proposed sealed document filed on ECF?

By default, documents filed on the ECF system are open to public inspection. However, filers may request permission to limit access to a document (seal) filed in ECF (see 6.1). The filing party has the ability to designate which party(s) will have access by selecting the appropriate Viewing Level for the document from the list below. Absent further restriction by the Court, the filing party will have access to their own filings.

- **Public:** No restriction at all (the default option). The document may be viewed by all PACER users and court personnel;
- **Parties:** Access is restricted to all attorneys appearing for parties to the case, pro se case parties with ECF access, and court personnel;
- **Selected Parties:** Access is restricted by the filer to attorneys appearing for selected parties, selected pro se parties with ECF access, and court personnel; or
- **Ex Parte:** Access is restricted to the attorney(s) appearing for the filing party and court personnel.

6.10 When electronically filing under seal, what will be visible to the public?

The motion and supporting papers must be filed in public view. Each will be visible to the public and should not include confidential information sought to be filed under seal.

Summary docket text on the ECF Docket Report is always visible to the public and should never include

confidential information sought to be filed under seal. Pending a decision of the Court, access to the proposed sealed document(s) will be limited to those persons included in the restricted Viewing Level selected by the filing party (see 6.9).

6.11 How do I electronically file under seal or redact pursuant to a prior Court order?

Where a prior order of the Court permits filing your document under seal or in redacted form, and the judge's Individual Practices permit electronic filing under seal, no new motion is necessary. The document may be electronically filed under seal using a restricted Viewing Level that is consistent with the Court's order, and it must be electronically related to the order.

6.12 What happens after the Court rules on the Motion to Seal or Redact?

If the Court grants the motion, the proposed sealed document will retain the requested restricted Viewing Level.

If the Court denies the motion, in whole or in part, the Court may modify the Viewing Level restriction and/or limit the extent to which the document may be sealed and/or redacted, or unseal the document in its entirety by removing the restricted Viewing Level.

The Court may, by specific order or Individual Practice, require a previously-sealed document to be unsealed or filed in redacted form for the public record in accordance with Federal Rule of Civil Procedure 5.2(d).

6.13 When filing under seal will my co-counsel be able to view the sealed document on ECF?

Yes, provided the co-counsel has appeared for the filing party on ECF.

6.14 Will secondary email accounts added to my PACER/ECF account have access to sealed documents?

Yes. The secondary account holder will have the same access to sealed documents allowed to the primary account holder.

However, adding a secondary email account, including a third-party service provider (e.g., PACER Pro, DocketBird, CourtDrive, RECAP), creates the potential to inadvertently reveal sealed or restricted case information. Failure to take proper precautions to protect the confidentiality of information filed under seal could be a violation of an order of the court or state bar rules regarding confidentiality. See the court's Notice to the Bar on this subject.

6.15 What if I believe a document cannot or should not be electronically filed on ECF?

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 particular document should not be electronically filed, must move for leave of the Court to file in the traditional manner, on paper.

6.16 When is electronic filing under seal not permitted?

Electronic filing under seal is not permitted unless authorized by the Individual Practices of the judge to

whom the filing is directed.

Electronic filing under seal is not permitted in criminal cases.

Electronic filing under seal is not permitted in cases sealed in their entirety. It is only available to parties seeking to file individually sealed or redacted documents in publicly filed civil and miscellaneous cases.

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

Electronic filing under seal is not permitted by pro se parties with electronic filing privileges without express permission of the Court. This includes pro se parties who have been granted general permission to electronically file documents on ECF.

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 under seal and be hand delivered to the Records Management Office.

Other Revisions

20.5 Must I seek formal admission to this court when my case is transferred as part of a Multidistrict Litigation (MDL) case?

No. Any attorney of record in any action transferred under 28 U.S.C. § 1407 may continue to represent his or her client in any district court of the United States to which such action is transferred. Parties are not required to obtain local counsel (Rules of Procedure of the U.S. Panel on Multidistrict Litigation, Section I, Rule 2.1(c)).

A CM/ECF account from this court will be required. Apply for a CM/ECF account at pacer.gov by selecting the MDL option under the attorney admission/e-filing registration link on the Manage My Account page. Include the MDL number. No fee will be required.

21.8 What if I mistakenly file sensitive or confidential information?

- (a) Contact the ECF Help Desk via email at helpdesk@nysd.uscourts.gov, ~~or by telephone at (212) 805-0136, Monday through Friday during normal Clerk's Office hours.~~ The subject line should include the words "Emergency Sealing Request". The filing will be temporarily sealed and made ~~invisible to the public~~ inaccessible to PACER users. If the request is received after business hours, 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 formally sealed by the Court.
- (c) Electronically file a redacted version of the mistaken filing.

23.3 - Must documents filed by parties on ECF be in text searchable format?

Yes. Documents filed by parties on the ECF system must be in text searchable format. The filing of exhibits in text searchable format is encouraged, but not required. Best results are obtained by converting documents directly from word processor format to PDF-A format.