

# Eastern District of Virginia Electronic Case Filing Policies and Procedures Manual

## Chapter Four: Electronic Filing and Service of Documents

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# Electronic Filing and Service of Documents

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## **Electronic Filing**

Electronic transmission of a document to ECF in accordance with these procedures, together with the transmission of a Notice of Electronic Filing (NEF) from the Court with a hyperlink to the electronically filed document, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the Local Rules of this Court.

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## Electronic Filing and Service of Documents

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**Filing Deadline** Filing must be completed before midnight, Eastern Standard Time or Daylight Savings Time, whichever is in place at the time a filing is effected, in order to be considered timely filed that day. However, if time of day is of the essence, the assigned judge may order a document filed by a certain time. Filing a document electronically does not alter the filing deadline for that document.

*Note:* The time of filing is not when the process of filing the document is begun, but when the NEF is generated.

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## Electronic Filing and Service of Documents

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### **Notice of Electronic Filing (NEF) As Proof of Filing**

A document filed electronically is deemed filed on the date and time stated on the Notice of Electronic Filing (NEF), so you should print out or store electronically a copy of the NEF as proof of filing. (See: *Filing Procedures - Civil Documents*, Block: *Filing a Motion in a Civil Case: Notice of Electronic Filing (NEF)* for instructions on how to save a NEF.)

**Note:** E-mailing a document to the clerk's office or to the assigned judge does not constitute filing of the document, nor does simply submitting a document via the CM/ECF system. A document is not filed until the system generates a NEF with a hyperlink to the electronically filed document.

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## Electronic Filing and Service of Documents

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**Official Record** The official record is the electronic recording as stored by the Court, whether the document has been filed electronically or filed on paper and scanned into the system.

*Note:* The filing party is bound by the document as filed.

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## Electronic Filing and Service of Documents

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**Service by  
Electronic  
Means Like  
Service by Mail**

~~In accordance with Fed.R.Civ.P. 6(d) and Fed.R.Crim.P. 45(c), service by electronic means is treated the same as service by mail: when a party may or must act within a specified time after service and service is made under Rule 5(b)(2)(C),(D), (E), or (F), three days are added after the period would otherwise expire under Rule 6(a).~~

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The above stricken text is no longer applicable due to Local Civil Rule 7 and Local Criminal Rule 47 amendments which took effect on December 1, 2016.

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## Electronic Filing and Service of Documents

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### **Docket Entry Creation and Modification**

When a filing user files a document, the system creates a docket entry that uses the information provided by the filing user. Clerk's office staff will, where necessary and appropriate, modify the docket entry description to comply with quality control standards.

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## Electronic Filing and Service of Documents

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### **Filing in the Wrong Case or Attaching an Incorrect PDF**

In the event a filing user electronically files a document in the wrong case or attaches an incorrect PDF document, the clerk of court, or a designee, is authorized to strike the document from the record. If a document is removed, a NEF will be sent to all parties in the case.

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## Electronic Filing and Service of Documents

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### **Consent to Electronic Service**

By participating in the electronic filing process, the parties consent to the electronic service of all documents and will make available electronic mail addresses for service. Upon the filing of a document by a filing user, an e-mail message containing the NEF, with a hyperlink to the electronically filed document, will be automatically generated by the ECF system and sent via electronic mail to the e-mail addresses of all parties who have registered in the case.

*Note:* Recipients of the e-mailed NEF get ONE free look at the linked document within the NEF. This free look expires after the recipient has clicked on the link or after 15 days have elapsed from receipt of the NEF. Further looks at the document must be taken through PACER. Therefore, recipients are encouraged to print out and/or electronically save the document during the free look.

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## Electronic Filing and Service of Documents

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### **Service of Documents to Non-Filing Users**

A party who is not a registered filing user is entitled to a paper copy of any electronically filed document, as well as of the NEF that constitutes proof of filing. Therefore, filing users must provide non-filing users, including terminated parties or attorneys, if appropriate, with a paper copy of the document and a copy of the NEF, pursuant to Fed.R.Civ.P. 5(b) and Fed.R.Crim.P. 49(b). The service of a paper copy of the document and of the NEF is only necessary for documents filed by the filing user.

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## Electronic Filing and Service of Documents

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### **Filing Documents That Require Leave of Court**

If the filing of an electronically submitted document requires leave of Court, such as an amended complaint, filing users should attach the proposed document to the motion requesting leave to file. If the Court grants the motion, the filing user should then electronically file the document.

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## Electronic Filing and Service of Documents

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### **Motions to Intervene in a Civil Case**

Motions to intervene must be granted by the Court before filing users can file any documents other than the motion itself and any supporting memoranda. Filing users should attach any proposed documents to the motion to intervene. If the Court grants the motion, the filing user should then electronically file the documents.

**Note:** The filing user is required to add the intervening party as a movant during the process of electronically filing the motion (See *Filing Procedures: Adding/Creating a New Party*).

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## Electronic Filing and Service of Documents

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### **Service of Process**

A certificate of service must be included with all documents filed electronically. Such a certificate must indicate that service was accomplished pursuant to the Court's electronic filing procedures and that the document filed was sent via U.S. mail to any non-filing users. The certificate of service should have the filing user's full nine-element signature block at the bottom of the page. (For further guidance, see the sample Certificate of Service in this manual and the Internet tip sheet on [preparing certificates of service](#).)

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# Electronic Filing and Service of Documents

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## Sample Certificate of Service

The following is a sample certificate of service by NEF and U.S. mail:

### CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Jacob Smith  
Attorney at Law  
123 Main Street  
Any Town, VA 22310  
jsmithatty@goodlaw.com

And I hereby certify that I will mail the document by U.S. mail to the following non-filing user:

Jane Jones  
224 Ivy Lane  
Any Town, VA 22214

\_\_\_\_\_  
/s/

Frank Counsel, Esq.  
Virginia bar number 12345  
Attorney for John L. Robinson  
Counsel and Parker, Attorneys at Law  
987 Court Way  
Any Town, VA 22315  
Phone: 703-555-6745  
Fax: 703-555-6746  
franknstine@service.net

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## Electronic Filing and Service of Documents

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### **Courtesy Copies and Other Division Specific Information**

Filing users need to stay current with each chambers' desires about courtesy copies and with other information that may be specific to filing in a particular division.

Division-specific information includes a list of civil and criminal documents that may be filed in open court by attorneys.

Filing users may find this information under the *General Information* section of the CM/ECF main page of the EDVA Internet site at [www.vaed.uscourts.gov](http://www.vaed.uscourts.gov).

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## Policies and Procedures – Electronic Transcripts

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### **Introduction**

Effective March 1, 2009, court transcripts that are transcribed for any trial or hearing occurring after March 1, 2009, in an electronic case is available electronically. To ensure that personal identifiers are not revealed in such transcripts the following procedures must be followed.

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### **90-Day Restriction Period**

Once a transcript for a trial or hearing occurring after March 1, 2009 in an electronic case is ordered and paid for it will be electronically filed, but will not be remotely available to the general public or any attorney who has not paid for it, for 90 days from the date the transcript is filed. Attorneys and members of the public may purchase a transcript from the court reporter during the 90-day period and any time thereafter.

During the 90-day restriction period:

- Public access to view an electronic transcript will be restricted to the public terminals at the Alexandria, Richmond, Norfolk, and Newport News courthouses.
- Remote electronic access to an electronic transcript will be available only to attorneys who have purchased the transcript from the court reporter.
- No copies of the transcript will be made for attorneys or the general public by clerk's office staff.
- Once an electronic transcript is filed, it is the responsibility of all counsel of record and pro se litigants to review their portion of the electronically filed transcript to ensure it does not contain any of the personal identifiers referenced in the E-Government Act and to file proper requests for redaction if an identifier is found.

The transcript will be electronically available remotely through PACER after the 90-day restriction period unless the restriction period is extended by court order.

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## Policies and Procedures – Electronic Transcripts, Continued

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### Review for Redaction

Attorneys of record must review the transcript for redaction purposes and electronically file a *Redaction Request* within thirty (30) calendar days of the filing date of the transcript if redaction is necessary.

Pro Se litigants must review the transcript for redaction purposes and file, on paper, a *Redaction Request* within thirty (30) calendar days of the filing date of the transcript if redaction is necessary.

If no *Redaction Request* is filed, the transcript will be made remotely electronically available without redaction at the end of the 90-day restriction period.

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### Redaction Request

The *Redaction Request* should state where the personal identifier appears in the transcript by page and line number and the manner in which the information is to be redacted. For example, if a party wants to redact a Social Security Number appearing on page 12, line 9 of the transcript, the statement would read: Social Security Number on page 12, line 9 should be redacted to read xxx-xx-6789.

**Because the *Redaction Request* will not be sealed it MUST NOT quote the personal identifier, rather it should refer to the identifier generically (i.e., Social Security Number, date of birth, etc.).**

Only the personal identifiers listed below are subject to a *Redaction Request*, and the redaction should be performed as indicated in the “Redacted” portion of the chart below:

Personal Identifiers	Redacted
Social Security Numbers	To the last four digits.
Financial Account Numbers	To the last four digits.
Names of Minor Children	To the initials.
Dates of Birth	To the year.
Home Addresses in Criminal Cases	To the city and state.

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## Policies and Procedures – Electronic Transcripts, Continued

**New Form** The following form is available on the EDVA Internet site, [www.vaed.uscourts.gov](http://www.vaed.uscourts.gov), in both the civil and criminal forms categories:

Form Name	Purpose
Redaction Request	Attorneys and pro se litigants complete and file this form, <b>and</b> submit a copy to the court reporter.

**New CM/ECF Filing Events** The chart below describes the CM/ECF filing events to be used:

Event	Category	Function
Redaction Request	<ul style="list-style-type: none"> <li>• Civil Events – Other Documents</li> <li>• Criminal Events – Other Documents</li> </ul>	Used by attorneys to electronically file the restricted <i>Redaction Request</i> . Pro Se litigants must file this document on paper.
Motion to extend time re: transcript	<ul style="list-style-type: none"> <li>• Civil Events – Motions</li> <li>• Criminal Events – Motions</li> </ul>	Used by attorneys to electronically file a request for an extension of time to: <ul style="list-style-type: none"> <li>• File and submit a <i>Redaction Request</i> to the court reporter.</li> <li>• Extend the 90-day restriction period.</li> </ul> Pro Se litigants must file this document on paper.

**Redacted Transcript** If a *Redaction Request* is filed, the court reporter will file a redacted transcript within 31 calendar days from the receipt of the *Redaction Request*, or longer if ordered by the court. The redacted transcript will be remotely electronically available at the expiration of the original 90-day restriction period. The originally filed unredacted transcript will remain sealed.

**CJA Attorneys** Counsel appointed pursuant to the Criminal Justice Act may claim compensation, at the applicable rate, for the time spent reviewing the transcript and preparing a *Redaction Request*, as well as for costs associated with obtaining a copy of the transcript.

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## **Policies and Procedures – Electronic Transcripts, Continued**

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**NOTE:**

**TO MINIMIZE REDACTIONS AND PREVENT HARMFUL DISCLOSURES OF PERSONAL DATA IDENTIFIERS, COUNSEL AND PRO SE LITIGANTS SHOULD NOT ELICIT SUCH INFORMATION DURING COURT PROCEEDINGS.**

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# Electronic Filing and Service of Documents – Electronic Filing of Sealed Documents in Civil Cases

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## Introduction

Sealed **documents** in public civil cases are to be electronically filed in accordance with Local Civil Rule 5. Sealed **cases** will remain inaccessible and all documents in sealed cases must be filed on paper. The filing party is responsible for serving all sealed documents and attachments on opposing counsel in compliance with the Federal Rules of Civil Procedure.

Sealed documents will be remotely inaccessible to counsel and pro se litigants but the docket entry itself will be accessible to the public.

Motions to seal are public documents and are not noticed for hearing. The Court may require additional briefing or argument.

Whenever a document is filed under seal, the filer must deliver a copy of the document filed under seal and all pleadings and documents relating to the motion to seal to the chambers of the presiding judge for review. When the proceedings are concluded, the Court will either destroy the paper copies containing confidential information or direct counsel to retrieve them.

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**Effective Date** January 11, 2016

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## Electronic Filing and Service of Documents – Electronic Filing of Sealed Documents in Civil Cases, Continued

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### Exceptions

Exceptions must be filed on paper and delivered to the Clerk’s office labeled “Under Seal” and shall be securely sealed with the container clearly labeled “Under Seal.” The case number, case caption, a reference to any statute, rule, order, or motion relating to the filing and a non-confidential descriptive title of the document shall also be noted on the container.

The types of documents that are exceptions to electronic filing of sealed documents in civil cases are:

- Documents filed in sealed cases,
  - In Camera Documents,
  - Social Security Administrative Records, and
  - Sealed documents filed by pro se litigants.
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### Sealed Filing Events

Sealed filing events have been created for use when filing sealed documents.

**Caution:** If the sealed filing event is not used to electronically file the sealed document, then the document will be available to the public.

The sealed filing events must be used to file the sealed documents to ensure that only the court can access the documents.

The sealed filing events are:

- Sealed Memorandum In Support
- Sealed Attachment/Exhibit(s)
- Sealed Document
- Sealed Response/Reply/Opposition
- Sealed Motion (used **ONLY** when the sealed document to be filed is a sealed motion; do not use this event to file the motion seeking permission to seal. Use the “Motion to Seal” event found under the *Motions* category. For example, if filing a “Motion for Summary Judgment” under seal, use this event to file the “Motion for Summary Judgment” but use the “Motion to Seal” to seek permission to seal the “Motion for Summary Judgment.”)

These events can be found under the attorney *Civil Menu* in the category *Sealed Documents*.

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## Electronic Filing and Service of Documents – Electronic Filing of Sealed Documents in Civil Cases, Continued

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### Notice Filing Events

In accordance with Local Civil Rule 5, two notice filing events were created as follows:

- *Notice of Under Seal Filing LCvR5(B)* to be used to electronically file Local Civil Rule 5(B) Notice and
- *Notice of Filing Sealing Motion LCvR5(C)* to be used to electronically file Local Civil Rule 5(C) Notice.

These events can be found on the Civil Menu under *Notices*. These filing events are public documents and should not contain any sealed information.

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### Service of Sealed Documents

Since the sealed document will not be accessible through the *Notice of Electronic Filing (NEF)*, the filing party is responsible for serving all sealed documents and attachments on the opposing counsel by other means. A certificate of service must be included with every filing and a copy of the NEF should be served with the sealed document.

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### Sealed Orders

Sealed orders will not be accessible remotely. Sealed orders will be mailed to attorneys and pro se litigants.

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## Electronic Filing and Service of Documents – Electronic Filing of Sealed Documents in Civil Cases, Continued

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### Steps for Filing Sealed Documents

If you are filing a document or portion of a document under seal pursuant to a governing statute, rule, or order, take the following steps:

Step	Action
1	File the document using the appropriate sealed filing event from the following selection: <ul style="list-style-type: none"><li>• Sealed Motion</li><li>• Sealed Memorandum In Support</li><li>• Sealed Exhibit</li><li>• Sealed Attachment</li><li>• Sealed Response/Objection/Reply</li><li>• Sealed Document</li></ul> <i>Note:</i> This document should be clearly marked “under seal.”
2	File the <i>Notice of Under Seal Filing LCvR 5(B)</i> (link to the sealed document) found under the <i>Notices</i> category. This document is available to the public.

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## Electronic Filing and Service of Documents – Electronic Filing of Sealed Documents in Civil Cases, Continued

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### Steps for Filing a Motion to Seal

If you are motioning to file a document under seal, take the following steps:

Step	Action
1	File the Motion to Seal using the motion to seal or motion to seal case, as appropriate, found under the motions category and upload the proposed order as an attachment to the motion to seal.  <i>Note:</i> The motion to seal is a public document and should not contain any sealed information.
2	File the <i>Notice of Filing Sealing Motion LCvR 5(C)</i> (link to the motion to seal) found under the <i>Notices</i> category. This notice is available to the public.
3	File the document you wish to seal using the <i>Sealed Document</i> filing event (link to the motion to seal).
4	File the non-confidential memorandum in support of the motion to seal using the event <i>Memorandum In Support</i> found in the category <i>Responses/Replies/Memoranda</i> (link to the motion to seal).
5	File any confidential memorandum in support of the motion to seal using the sealed event <i>Sealed Memorandum In Support</i> (link to the motion to seal).

### Oppositions/Responses

If you are filing a sealed document that responds, replies, or opposes a motion to seal, use the sealed filing event *Sealed Response/Reply/Opposition* to ensure that your document cannot be viewed by the public.

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## Electronic Filing and Service of Documents – Electronic Filing of Sealed Documents in Civil Cases, Continued

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### File Size of Documents

As with any electronic filing in the Eastern District of Virginia, your sealed document filing size is limited to PDF documents no larger than 10 megabytes (about 200 pages). The total number of megabytes in a submission, including attachments, must be no larger than 30 megabytes (about 600) pages. Each document in that submission must be no larger than 10 megabytes.

If the filing including attachments is larger than 30 megabytes, split your filing into submissions of no larger than 30 megabytes each.

Take the following steps to file **sealed** documents that are larger than 30 megabytes:

Step	Action
1	Break your document or filing, including attachments, into smaller PDF documents of no more than 10 megabytes each and into submissions of less than 30 megabytes each.
2	File the first submission as usual (as a main document with attachments) using the appropriate filing event.
3	Create formal document called <i>Continuation of Sealed Filing</i> that includes a <i>Certificate of Service</i> and your complete nine-element signature block.
4	File the <i>Continuation of Sealed Filing</i> using the sealed filing event <i>Sealed Attachment/Exhibit(s)</i> .
5	Upload the smaller PDF documents as attachments to the <i>Continuation of Sealed Filing</i> .

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## Electronic Filing and Service of Documents – Electronic Filing of Sealed Documents in Civil Cases, Continued

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### Correcting Mistakes

If you erroneously file a sealed document without using a sealed filing event or erroneously file a public document using a sealed filing event, contact the Clerk’s Office Operations Section Helpdesk for assistance.

The Clerk’s Office Operations Section Helpdesk is available from 8:30a.m. to 5:00p.m. Monday through Friday with the exception of federal holidays or closures.

<b>Division</b>	<b>Helpdesk Contact Number</b>
Alexandria	703-299-2101
Norfolk/Newport News	757-222-7201
Richmond	804-916-2220

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