



“Emergency Production” of digital documents for federal electronic filing

You're in a panic when you realize your office is not equipped to file electronically the federal pleading that is due next week. Here's how to get it done inexpensively.



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- Did your great case get removed to federal court?
- Do you now have a complex federal filing due in a few weeks?
- Are you admitted to the federal court and properly registered for ECF participation?
- Does your office know squat about producing digital pleadings for filing in federal court?

This article assumes you need to spend your limited time dealing with the substance of a federal pleading, that your office is not set up to create PDF files, nor convert paper into a digital format, and finally, that you won't have time to deal with the hardware and software necessary to create or convert pleadings into the digital format required for federal filings.

Last month's column discussed the federal court's *mandatory* Electronic Case Filing (ECF) program and explained how to register for ECF litigation and participation. (See *Plaintiff Magazine*, Volume 2, Issue 9, September 2008.) This article will show you how to “emergency create and convert” pleadings so that you can competently participate in a federal court's ECF program.

A future article will discuss non-emergency options such as the different dedicated scanners that are available, what features to look for, pricing, and the many different software programs available that will allow you to create, convert, merge, edit and manage digital documents.

Why can't I just use my damn fax machine?

As said in last month's article, if you are in federal court, “Electronic litigation is now mandatory.” (The federal court calls electronic litigation “ECF” which stands for “electronic case files.”)

The federal court ECF system does NOT use fax machines. The program uses the Internet, digital files and e-mail to litigate most of a case.

Therefore, if your case ends up in federal court, the finger of impending doom is pointing at YOU to be able to:

- **Produce** digital documents (create digital documents from scratch using your PC);
- **Convert** paper documents into digital format (change pieces of paper into digital form);
- **Manage** digital files and documents (work with documents on your PC);
- **File** electronic pleadings (in lieu of manually filing papers at the clerk's window);
- **Serve** documents on the opposing party (no more serving papers in person or by mail); and
- **Communicate** with the court, clients, witnesses, and opposing counsel.

Bonus Comment: While the above appears to be a long, demanding list, don't fret. With advances in technology and the cost of equipment and software plummeting, you can be up and running for far less money and effort than you would have been in year 2003, for example.



Additionally, electronic litigation equipment and software are now truly “plug and play.” These tools are easy to get running and the computer processes are fairly fast, (e.g., scanning and converting documents.)

Emergency Procedures – Create ECF documents within hours of reading this!

Let’s assume you are in so much fear of e-filing that you look like a walking calcium deposit. The reason: you suddenly realize that you do not know anything about digital files nor have you ever had to deal with acronyms such as “PDF” and “ECF.” And, as typical of most lawyers, your federal pleading is due next week and you waited until the last minute to deal with all this. However, fear not . . . a solution is at hand. The following steps take care of creating, converting, and managing digital documents (described above):

• Step 1: All-In-One Printer

Head over to OfficeMax, Staples or Office Depot and purchase an *all-in-one printer*. Note: some manufacturers call these MFD machines (multi-function device.) With this inexpensive device, you can easily create or convert “ready-to-file” PDF documents (“PDF” or “portable document format” is the digital format federal courts require for filing.) Although this computer peripheral falls under the “computer printer” category, you are buying the machine for its *scanning* function, a.k.a., the device’s ability to create or convert paper into digital PDF format.

Bonus Tip: Since emergency scanning is why you are getting an all-in-one device, don’t concern yourself with the all-in-one device’s other functions, such as inkjet printing, faxing, and copying. (Note: since faxes are becoming an outdated means of communication, some modern all-in-one devices do NOT even have a fax machine built in.)

The all-in-one printer connects to your computer’s USB port. This makes

the all-in-one truly “plug and play.” You could conceivably create PDF documents within minutes of connecting this device to your PC. The big-boy manufacturers of all-in-one multi-function machines include HP, Canon and Brother. Professional and user reviews rate the Canon Pixma series as the best multi-function printers overall. Like all computer technology, the all-in-one MFD printer has advanced ten-fold in performance and features while significantly decreasing in price. Today, a full-featured all-in-one printer might cost from \$200 to \$300!

Side note: For emergency scanning when our then-\$5,000 scanners were on the fritz, our office used the Canon Pixma MP830 with great results. It putt-putts at scanning at the rate of six pages per minute, but it worked very well as an emergency backup. The then-\$350 Canon Pixma MP830 received rave reviews at the time it was introduced in 2006. Nowadays, it sells for as low as \$150 on the Internet. Check office supply or computer stores for this model; if it is not available, I recommend sticking with the Canon Pixma series since the newer models are even better than the MP830.

Critical Tip: Make sure the all-in-one device you are considering has an ADF (automatic document feeder.)

Some older models or even current budget machines do NOT have an ADF. If the all-in-one device does NOT have an ADF, do NOT buy it. **Warning:** an all-in-one device *without an ADF* may look similar to a machine with an ADF. So, be careful when looking the machines over. Check the specs to make sure it has an ADF!

• Step 2: PaperPort Software

What is PaperPort and why do you need it? Well . . . assuming you do NOT have software that can create or convert your pleadings into PDF format (such as the very expensive Adobe Acrobat) or you cannot convert exhibits into PDF digital files, you need software to perform these functions. PaperPort works in

conjunction with the scanner feature of your all-in-one device to convert paper and documents into a PDF format.

For example, assume you are filing a supporting declaration to a motion. The declaration will have exhibits attached, including a contract in dispute and letters exchanged between the parties. You need a way to get the declaration (that was produced and printed with MS Word) and the exhibits converted into a single document that is in the federally required PDF format. You would use PaperPort software to do this.

PaperPort is a product from *Nuance* (currently Version 11). The newest versions sell for about \$70 to \$150 (Why the difference in price? Simple: pay more money, get more features.) What is PaperPort? Nuance’s Web site says: “*With PaperPort you can turn piles of paper and photos into organized files that you can quickly find, edit, and manage. PaperPort makes it simple to connect your scanner and computer together to work with PDF and JPEG images just like working with paper documents right on your desktop.*” You can purchase and download PaperPort on the Internet, making it easy to buy and install the program on your PC. (See <http://www.nuance.com/paperport/>).

The program is also available at some office supply and computer stores. While installing the program, PaperPort automatically detects your all-in-one device’s scanner so you can be “electronically litigating” in no time.

• Step 3: High-Speed Internet connection

An Internet connection allows you to file and serve documents and communicate with the court, clients, and opposing counsel.

The beauty of having created PDF pleadings and documents is that you can do so much with them once they are in digital form. Not only can you play the federal ECF game, you can also serve discovery on opposing counsel via e-mail, easily keep clients updated by sending copies of all pleadings filed and



documents served, and better manage case documents and files in-house.

This article assumes that you have a high-speed connection of some sort in your office. If you do not have one, get one. The reason you need a high-speed connection is that sometimes your electronic filings might be one MB or more. Files of that size, sent over a dial-up account, will take five to ten times longer than with a DSL or broadband connection.

Also keep in mind, as federal court ECF workshops and Web sites have mentioned, while a dial-up modem connection will work with the ECF system, it is NOT recommended. In fact, back in 2005 at an ECF seminar, a Northern District judge told attendees that dial-up service should not even be an issue considering the low cost of a DSL or broadband connection. In other words, federal judges have no sympathy or understanding for a lawyer still using a dial-up 56K modem account.

• **Step 4: E-mail**

You need an e-mail account in order to register for participation in the federal court's mandatory ECF program. We will assume that in year 2008 you have an e-mail account.

There are strict procedures on how to communicate via e-mail with the court, whether with the clerk or the judge. Look on the court's Web site to see the kind of rules and detail that you must attend to when communicating by e-mail. For ex-

ample, see the rules on what you must put in the subject line of an e-mail, what is considered an ex-parte contact, etc.

Bonus Tip: There is no restriction on the type of e-mail account the court will accept. In other words, your e-mail address on file can even be a free mail account, such as Yahoo or Gmail. You should also consider registering an additional e-mail address on another server with the court. This way, if there are ever any problems with one e-mail server that prevents you from accessing your e-mail, you can always access the court's e-mail from the other e-mail address on another server.

However, if your e-mail address sounds stupid or unprofessional, for example: *hottotrot@comcast.net*, consider getting a more professional address, perhaps even through a free mail account if necessary.

Also, check your SPAM folder, either the folder that is online or in your MS Outlook program. It is critical that you check the SPAM folders to make sure your e-mail program is not erroneously tossing legal communications from the court into your SPAM folder.

Lastly, in regards to e-mail, make sure you send communications and file documents to the intended parties, client and court. Because of the casual nature of e-mail, it is easy to make mistakes and to send communications and filings to the wrong recipient.

• **Step 5: Warning about deadlines**

DO NOT wait until the federal filing is due to purchase and setup this "emergency" equipment and software. Buy the all-in-one device ASAP, install everything, and then log-on to a federal court's Web site to test your equipment and software installation and ECF account. For example, the Northern District of California has a "dry run" page where you can log-on and "pretend file" documents. See <https://ecf.cand.uscourts.gov/cand/index.html> and click <Tutorials and Training>

Conclusion

After you get through your first few electronic filings, most likely done on an emergency basis, you will eventually know what all federal court litigators know: there are many advantages to the federal court's ECF program and few disadvantages. The benefits of electronic litigation far outweigh the detriments.

In a future article, we will discuss in detail everything that is needed to run an effective, efficient, and competent electronic litigation law office.

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