



Dealing with Federal Electronic Litigation [ECF]

Why wait until a case forces you to deal with federal e-filing and ECF procedures? Learn what to do by reading this article.



Kippes

A.T. KIPPES

At some point you are going to have to deal with handling cases electronically, meaning that all aspects of a case are litigated via court Web sites, and e-mail service of documents on opposing counsel. It is just a matter of time before all cases go “paperless” meaning that, at least to the extent you are dealing with courts [federal or state], you won’t be filing much paper.

The reasons you need to learn federal ECF (Electronic Case Files) procedures are many, not the least of which is that if you do not, staying ignorant can cost you a significant amount of money. For example, you can commit malpractice if you do not know what you are doing in federal court; you may lose fees if you are compelled to associate counsel familiar with the fed ECF system; or worst of all, you may have to give the entire case away to a lawyer competent to practice in federal court.

As many of you know, all California federal district courts are now on the ECF. What this means is that to litigate a federal case you must (A) be admitted to the District Court to practice before it; (B) be separately registered with the District Court to handle cases electronically; and (C) have a PACER account.

Do not wait until you are forced into federal court to deal with a U. S. District Court’s admission requirements and participation in mandatory ECF procedures. Get admitted to practice in federal court and register to become an ECF participant now, instead of later.

In addition, being admitted to practice in federal court looks impressive. The District Court gives you a snappy looking certificate for your kudos wall, and you can trumpet on your Web site that you are admit-

ted to practice in federal court. That’s all worth the hassle, isn’t it?

Now, on with the steps:

District court admission

You must be admitted to the federal District Court in which you will be litigating the case. This is a separate requirement from being registered with the District Court to participate in ECF.

Getting admitted is easy. First, obtain a letter of good standing/active bar membership from the State Bar. After you receive a good standing certificate from the Bar, submit your application and letter to the District Court.

Example of how to get admitted to a California U. S. District Court: Go to the Northern District of California’s Web site at www.cand.uscourts.gov. Once there click <For Attorneys> <Procedure for admission> <Instructions and Forms>.

Bad News: It’s now \$210 to get admitted to the Northern District.

Letter of good standing

From the State Bar - Go to www.calbar.ca.gov and click <Attorney Forms>, look under “Member Services” and click <Certificate of Standing Request>. The PDF form will open with instructions and the request form on obtaining up to three letters of good standing.

More Money: It’s \$25 to obtain up to three certificates of good standing. Might as well order three in the event you want to get admitted to other federal courts. Note: The letters have an expiration date; they are usable only for a specified time.



PACER account

Getting a PACER account is something most attorneys do not understand and they fail to do. If you do *not* have a PACER account, you will *not* be able to view documents filed and served in your case. Although you can still register with a court's ECF program, if you want to view documents filed in your case, you must have a PACER account. So get one.

PACER is an acronym for "(P)ublic (A)ccess to (C)ourt (E)lectronic (R)ecords." One needs a PACER account because all federal courts use PACER as a centralized repository to view case information, including, most importantly, documents in the case you are litigating.

Bonus Comment: The operative words in the PACER acronym are "public access." Anyone, including laypeople or a curious client, can obtain a PACER account. Once a PACER account is obtained, a user can access all public court files located in any federal court (the only files not obtainable are those filed under seal by order of the court).

To obtain a PACER account, go to PACER at pacer.psc.uscourts.gov. Once there, click <Register for PACER>. Follow the instructions from there. Here is a direct link to the registration page: <https://pacer.psc.uscourts.gov/psco/cgi-bin/regform.pl>.

More Money: There is no charge for accessing and downloading documents in your case (regardless of whom they are from: the Court, opposing counsel or even documents filed by your office).

But to view documents in cases where you are *NOT* attorney of record, PACER charges eight cents per page you view or download. If you want to see a killer summary judgment motion filed in a case similar to yours and the Points & Authorities are 20 pages, that will cost you \$1.60 to view and/or download in PDF format. If the Exhibits total 200 pages, that will cost you \$16 to view/download.

ECF registration

Once admitted to the District Court, you must then register with the ECF administrator to become an ECF participant. It's all fairly simple since the registration process is handled electronically, but before you can e-file documents you must first register with court and obtain a log-on ID and password.

Bonus Tip: Each District Court is different on how they handle the ECF registration process. You should check on the appropriate court's Web site for registration procedures.

Example of how to register for a Court's ECF program: Go to the Northern District's ECF page: <https://ecf.cand.uscourts.gov/cand/index.html>.

Once there click <To register, please click SUBMIT> button. After that you will be guided online through the entire process. The application page is here: www.cand.uscourts.gov/cand/ECFReg.nsf/ECFAttys?OpenForm.

Test page

Most court ECF sites have a "test" page where you can pretend-file documents and become familiar with the process. It's all very helpful so I strongly suggest you go through a few dry runs.

Go to <https://ecf.cand.uscourts.gov/cand/index.html> and click <Tutorials and Training>. From there you can follow instructions on how to do some sample training exercises (what I call pretend filings.)

Technical requirements

Although it is beyond the scope of this article to discuss technical or computer aspects of e-filing, the Northern District Court of California puts it well:

The technical requirements (for ECF) are minimal and inexpensive, but in order to e-file, you must have (or have access to) all of the following:

- A personal computer – The ECF HelpDesk solely has information to sup-

port Microsoft Windows 95, 98, NT4, ME, 2000 and XP. Although we have had numerous reports of successful e-filing using various Macintosh, Unix and Linux computers, the ECF Helpdesk does not have much information to support these operating systems.

- Internet connectivity to access ECF and email. Dial-up connections will work, but a faster "broadband" connection (DSL, cable, etc.) is always better.
- An e-mail account to register for ECF now, to receive future ECF notices and to send required e-mails.
- An approved Internet browser such as Internet Explorer.
- A word processing program to create your documents. Microsoft Word, Corel WordPerfect or any word-processor or text-editor will work.
- PDF reader software such as Adobe Acrobat Reader to read PDF files.
- PDF writer (converter) software to create PDF files (this is different from a PDF reader and is NOT included with the free Adobe Acrobat Reader).
- A scanner (OPTIONAL, but highly recommended) for imaging documents to be filed electronically that are not otherwise available in electronic format (such as exhibits), and/or as required.

Advantages to ECF

There are many advantages to federal electronic litigation and going paperless. To name a few:

- Unless *otherwise ordered by the court*, the e-filing deadline for documents is 12 midnight. You are not at the mercy of a clerk's office hours, and you can commence filing literally ten minutes before midnight.
- E-filing documents eliminates having to physically file documents at the clerk's window, and you do *NOT* have to serve documents on opposing counsel [this is because when you e-file pleadings to the court, PACER electronically sends



the documents to all counsel in the case. Opposing counsel then has the option of downloading [for free] one copy of the document you e-filed.

- E-filed documents do *NOT* require a proof of service attached. This saves a little work, for sure.

Bonus Comment: Newbies to the federal system show their inexperience by attaching a proof of service to e-filed documents. And some newbies feel uneasy about not serving paper documents [as is done in state court] so they serve copies by mail in addition to e-filing. But under the federal ECF rules, one need not do anything more than e-file the pleadings.

Some perils to avoid

For every advantage of e-filing, you just know there are an equal or greater list of perils and disadvantages to the ECF system. Here are some perils that may result in your monument to good writing being stricken by the court or imposition of sanctions:

- The rule on e-filing is that your filing must be *COMPLETED* before the deadline. In other words, your filing is untimely [and may be stricken] if you mistakenly think that as long as you log on and start to file at midnight, for example, that you are good to go. If your filing starts before midnight, but completes at 12:05 a.m., you are in the sewers of Paris.

- Each court has a *MAXIMUM* size for any one document that is e-filed. For example, the ECF administrator might dictate that a document cannot exceed 5 MB in digital size. All courts have tips

and tricks on how to deal with file size limitations. Look them up on a court's ECF Web site.

The most common tip is to simply break up the pleading or exhibits into parts so that no one filing exceeds the court's filing limit. Then simply name each filing, for example, "Exhibits Part 1 A to N," Exhibits Part 2 O to S" and so on. While on paper the exhibits are perhaps A to Z and attached to a single declaration, on an e-filing the entire stack might be 15 MB. If that's the situation, you would have to break down the exhibits so that each part does not exceed the court's filing limits for individual e-filed documents.

- In the federal system, most judges require that you deliver "Chambers Copies" to him or her of all documents e-filed. You are required to put on each pleading caption page, "Chambers Copy – Do Not File," and also to label an envelope with that statement if you are sending the pleadings inside a large envelope.

You deliver Chambers Copy pleadings to the clerk's window or to the Judge's clerk [this depending on a judge's order on how he or she wants Chambers Copy documents delivered.] If delivering the pleadings to the clerk's window, it is imperative that you mark the pleadings as "Do Not File" so the Clerk knows not to file the pleadings and to simply route the documents to the judge in your case.

- Documents are required to be "digitally signed" by the attorney submitting the document. This is done by placing a /s/ and typing your name *on the*

signature line of all pleadings. If you do not follow this procedure, expect, at the minimum, an e-mail from the judge's clerk chewing you out for not following procedure. Worst case: a federal judge might strike your pleading because it was unsigned. Here is how a digital signature looks:

/s/ Jon L. Smith _____
Jon L. Smith, Attorney for Plaintiff John Doe

Conclusion

E-filing documents and the federal ECF program are the way of the future in all courts, including state superior courts. All courts will eventually go paperless. Rather than wait until a case forces you to deal with federal e-filing and ECF procedures, go through the steps outlined in this article. When state courts go paperless, you will be all the more prepared.

It's far better to deal with all this while not under the pressure from other aspects of a case that ends up in federal court.

And remember, once admitted to a U. S. District Court you get a snappy certificate suitable for framing. Nothing wrong with showing off your accomplishments. Oh... you don't get a diploma upon successful registration with ECF – not that such is much of an accomplishment to brag about.

A. T. Kippes is a graduate of the Haas School of Business at the University of California, Berkeley and Golden Gate University School of Law. She focuses her practice on competitive employment litigation, non-compete issues, and animal law.