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Practitioner's Alert: EDVA Adopts Electronic Filing for Civil Complaints

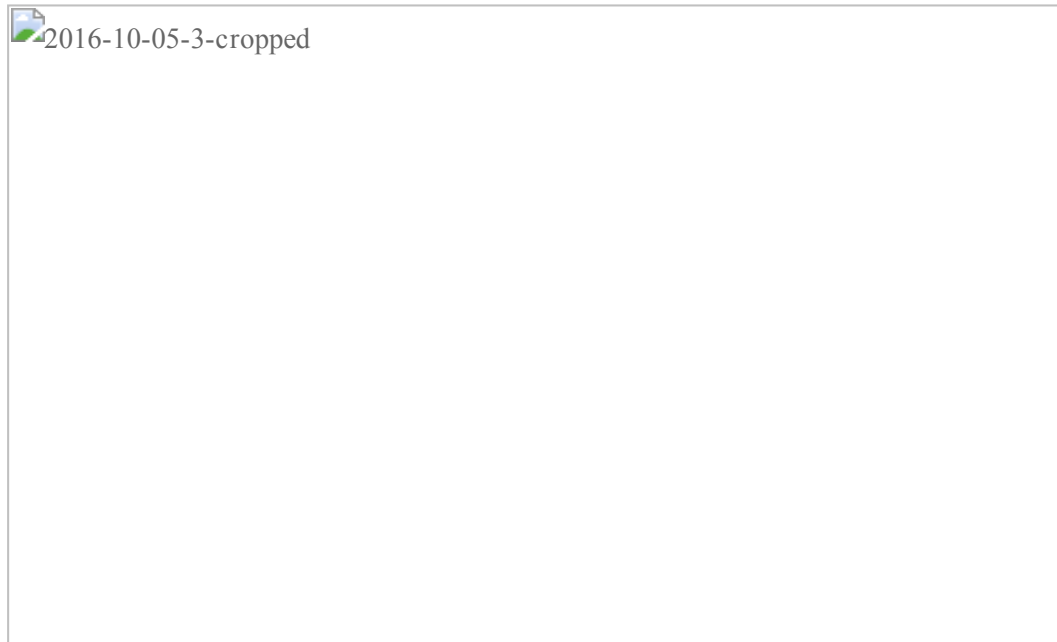
The Eastern District continues to march towards a paperless practice. As of October 3rd, civil complaints and notices of removal must be electronically filed via the CM/ECF system. Previously, such documents were filed on paper with a physical trip to the Clerk's Office. Now, the filing attorney uses a computer screen, and the process requires close attention to the details of the CM/ECF system. While the Clerk's Office has provided a five-page handout on the new procedure, practitioners are well-advised to build extra time into their filing schedule so they may seek assistance from the Clerk's Office in the event of a question or mistake.

1. Uploading the Complaint

The new process begins with uploading a complaint (or notice of removal) and a civil cover sheet to the CM/ECF system. When filers log into the CM/ECF system, they see the following new option:



Despite its strange text, this is the option to open a new case. Click this option to bring the user to a drop-down menu which includes “Complaint”, “Notice of Removal”, and other less-common methods to open a new case.

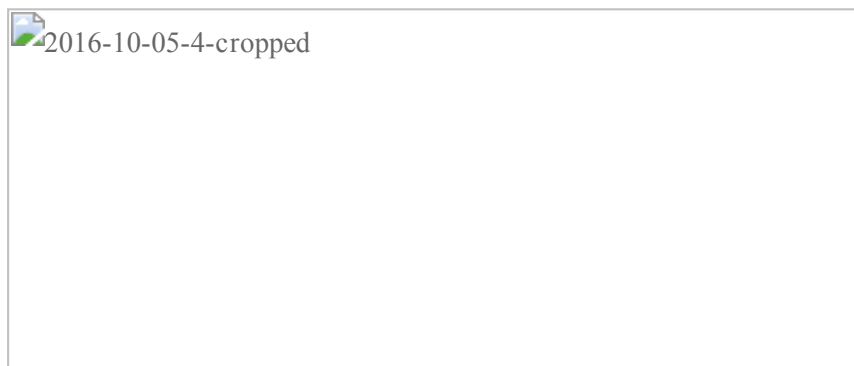


After selecting the appropriate filing and clicking the Next button, the user sees a warning and explanatory screen about the “shell case” number.

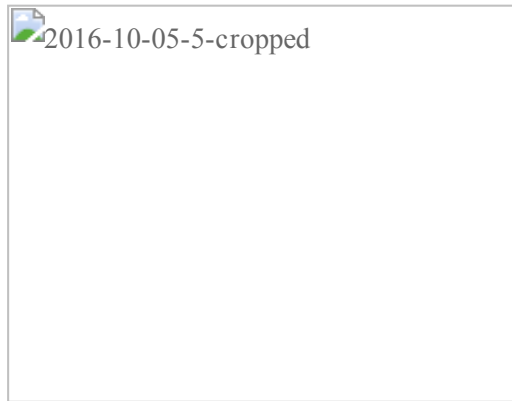
2. The “Shell Case” Number

The “shell case” number is essentially a dummy case number that is temporarily assigned to the new case. It is always the same (five 9’s), but also includes the Eastern District division-specific number and the last two digits of the current year. An example is this: 1:16-at-99999.

Filers will see the following warning screen to remind them of the appropriate division numbers:



On the next screen, filers will enter in a text box their proper division number, last two digits of the current year, and the dummy shell number (five 9's). It is important to note that the last two digits of the current year always follows the division number and a colon along with "-at-". In the following example, the Alexandria division number is used ("1:16-at-99999"):



Once the Clerk's Office receives the new filing, it will assign a proper case number and replace the dummy shell number.

3. Important Attachments to the Complaint

After the filer has entered the dummy shell number, the next screen will look familiar. At this screen, the user will select the "main document" to be uploaded (*e.g.*, the actual complaint or notice of removal) followed by any attachments to the main document. Possible attachments include:

Exhibits to the Complaint/Notice of Removal

Civil Cover Sheet

Corporate Disclosure Notice (if applicable)

Proposed Summons

Here, the civil cover sheet is important, and it must be included. The Clerk's Office will use this to assign a proper case number, and any filing omitting the civil cover sheet will likely be rejected by the Clerk's Office.

In contrast, a proposed summons is optional at this point. Filers may omit the proposed summons if, for example, they wish to initiate the

lawsuit but delay service of the complaint. If a proposed summons is attached, the Clerk's Office will process and then issue the summons via the ECF system. Upon receipt of the summons, attorneys must print two copies to be served with the complaint (one copy remains with the defendant while the other is executed by the process server, returned to the serving attorney, and then filed via the ECF system).

4. Enter the Case Title

The next screen allows the filer to enter the case title in the format of "Plaintiff v. Defendant." The Clerk's Office has not given much guidance on how this text will be used, and there is little room provided for multiple plaintiffs or defendants. It is important to give thought to this case title (such as whether "et al." should be used) because the exact text will likely appear in all ECF notices for the case.

5. Pay the Filing Fee via Credit Card

The next screen asks whether the filer is exempt from paying the standard filing fee. For most civil practitioners, the answer here will be *No*. Clicking the Next button will then take the filer to the federal government's Pay.Gov website to pay the filing fee (which is outside of the CM/ECF website). Credit cards are the most common forms of payment, though Pay.Gov is moving towards allowing payments via PayPal and even Amazon.com accounts. The important change from traditional practice, however, is that checks (including law firm checks) are no longer acceptable for filing fees.

Once the fee is paid via Pay.gov, the filer is routed back to the CM/ECF website.

6. Save Your NEF!

After payment is made, the filer is shown a final confirmation screen. This will be familiar to ECF filers as it asks the user to "commit" to the transaction while displaying the file paths for the main documents plus any attachments. Once the user clicks the Next button (and assuming payment was successfully made), the case is now "filed."

The final screen displayed is the Notice of Electronic Filing ("NEF"), also familiar to frequent ECF users. But there are two important differences with this NEF as compared to other filings. First, the case number will show the dummy shell number (but prefaced with the division-specific number). Later NEFs will contain the correct case number assigned by the Clerk's Office.

Second, the filer should save a copy of this NEF because it will not be emailed to the filer (unlike every other NEF in a case). This is the filer's receipt, and it should be treated like the paper receipts received from the Clerk's Office in past generations.

When, Exactly, are you Filed?

Practitioners who are close to a deadline (such as a statute of limitations deadline) are rightly concerned about when their case is deemed "filed." Traditionally, a case was considered "filed" on the day that the Clerk's Office received the initial papers (usually a complaint) AND the applicable filing fee. This all had to be done before the end of regular business hours (usually 5:00pm) and the close of the Clerk's Office's doors. Under the online system, CM/ECF and Pay.Gov accept payments 24 hours a day (except when the Pay.Gov website is down for maintenance).

So, theoretically, a case will be deemed filed as long as the filer completes the document upload process, pays the filing fee online, and receives the initial NEF prior to 11:59pm. But there has been no case law yet testing this assumption. Further, if something goes wrong, the filer will have to wait until the next business day to speak to a representative in the Clerk's Office. Additionally, Pay.gov is fairly frequently down for maintenance (but usually after regular business hours or on weekends). This is all the more reason to not wait until after business hours on the last day of a statutory deadline to file a new complaint.

Watch your PDF File Size

The Clerk's Office warns users to be careful about the file size of their PDFs uploaded to the system. The current file size limit is 50 megabytes, which is more than plenty for most normal filings. If, however, a user is scanning images of pre-printed pages (as opposed to the more efficient method of converting MS Word documents directly into PDFs using software), then the 50 MB limit could be violated, especially if color photographs are included. In this situation, the user needs to consult someone else who is well-versed in efficiently handling PDFs to solve the problem.

Emergency Motions

The Clerk's Office notes that in the case of "emergency" motions (such as requests for emergency TROs), the user should follow the process outlined above to file the complaint. After filing, the user should call the divisional Clerk's Office to flag the emergency nature of the

case. The Clerk's Office will then expedite the opening of the civil case. Once the case is opened, the user can then electronically file the motion for the TRO and any supporting documents. But, again, the Clerk's Office will only assist during normal business hours.

Exceptions to Electronic Filing

There are at least six exceptions to the electronic filing process at this point:

Qui tam cases

Cases filed under seal

Pro se cases

Ship attachments

Receivership cases

Registration of Foreign Judgments

These cases are still filed in paper in the traditional way at the counter of the Clerk's Office, though it is likely that, with future improvements to the CM/ECF system, this list will be whittled away.

When in Doubt, Call the Clerk's Office

As most regular Eastern District practitioners already know, we are blessed to have a professional and helpful staff in each of the divisions' Clerk's Offices. Whenever there is a question, problem, or mistake (as routinely happens involving attorneys and electronic filing) the best bet is to immediately call the Clerk's Office. Most offices have a specific staff member assigned to answer ECF questions, and in this author's experience, they have always been friendly, helpful, and efficient. But they can only help during normal business hours. Yet another reason not to wait until 11:59pm on the day that the statute of limitations runs.

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