

THE DAILY RECORD

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Top 10 List:

Painful lessons learned from incorrect use of Federal Court Electronic Filing System

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The electronic filing system was implemented in the U.S. District Court for the Western District of New York in January 2004. Since that time, I have had plenty of opportunities to use the system — including, unfortunately, incorrectly on more occasions than I would prefer to admit.

Of course, I firmly believe there is a bright side to everything, and if nothing else, the ever-so-helpful phone calls from the U.S. District Court Clerk's office the day after an incorrect filing have taught me many useful tips. In fact, there are at least 10 such helpful tips that I have learned from my own mistakes, as well as those of some others that I have heard, which I will share in a "Top 10 List of Painful Lessons Learned From Incorrect Use of the Federal Court Electronic Filing System."

1 The electronic filing system only works after you have actually commenced your lawsuit. Yes, that's right — you **cannot** electronically file your summons and complaint until after the case is opened. Thus, when you are opening a new case (i.e. commencing an action) you must file by hand the original papers commencing the action.

In other words, you or somebody on your behalf still needs to walk over to the Clerk's Office with the original papers in hand, any necessary filing fee, and an electronic version of the original papers (e.g. PDF files contained on a CD). The Clerk's Office will then initiate the case into the electronic filing system, and everything thereafter should be handled electronically.

2 Be cautious about your exhibits and attachments. The system is set up to only accept approximately 20 to 25 attachments to each document. I must admit that I have slipped more attachments through, but it's occurred only by sheer luck. This restriction can be particularly frustrating in that you may only learn that your submission exceeds the

attachment maximum after going through the entire process of completing your electronic filing.

Needless to say, this can be quite stressful if you are facing pressure to get something filed, you go through the entire process of attaching voluminous exhibits to your filing, and then at the very end you receive a message that your filing has been rejected. It is particularly stressful if you are trying to effectuate your filing at 11:59 p.m. on the day that the filing is due (see tip 3 below).

Of course, this does not mean that you have to limit your attachments to 20 to 25. Instead, once you complete your submission up to the maximum number of exhibits, simply complete another submission by selecting "Continuation of Exhibits" contained under the event heading of "Responses and Replies" to add additional exhibits to your filing. You can repeat the

process until you submit all your attachments.

3 Don't wait until the last minute. Admittedly, for any litigator, this is easier said than done — but if you can, it is best to try and complete your filing before 5 p.m. on the date that it is due. If you do run into difficulties you will still have time to run over to the Clerk's Office (or at the very least place a telephone call). Again, these are tips I have unfortunately learned from my own errors, and I can tell you that it is no fun spending a late Friday night trying to figure out how to file your papers when Internet service has crashed in downtown Rochester.

4 Remember the term "5 megabytes." That refers to the size of your file. Each individual file (including each individual attachment) that is filed is supposed to be no more than 5 megabytes in size.

Typically, this means approximately 80 to 90 pages of normal resolution black and white text. However, when you are dealing with color photographs you will reach the allotted

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Continued ...

memory much quicker — or if you have your scanning set at a high resolution, you will likewise reach this maximum very quickly. When in doubt, less is more. It's much simpler to divide your file into different volumes versus trying to squeeze extra megabytes through the system.

5 Don't overdo it on your motions. When filing a motion, you should make sure not to select the "notice" choice, but rather choose "motion" — however, only do this once per motion. In other words, if you have a memorandum of law that you are filing separately from the affidavit and notice of motion, do not select "motion" as your event a second time. Rather, go into the event heading of "Responses and Replies" or "Other Documents" and choose the appropriate selection for your memorandum. Otherwise, you will be electronically communicating to the court and the Clerk's Office that you have filed more than one motion.

Keep in mind that when making this alternative selection, you should link the filing to the motion entry — as you go through the filing, this linking option should automatically appear.

6 Redactions, redactions. Make sure to follow the court's privacy rules — the Clerk's Office will not do your redactions for you. The most common mistakes are social security numbers, bank account information and dates of birth — all of which are supposed to be redacted from any filing (including from any exhibit to any filing). Obviously, this can involve a lot of work with certain types of documents (e.g. medical records).

7 The filer must be the signer. Whoever signed the papers or pleading has to be the filer. In other words, the password that is used to log onto the system to conduct the filing must match the signature on the document. Away to prevent any problems is to have all attorneys of record sign the notice of motion or other filing. Alternatively, with permission, the filer can use the password of the attorney who signed the document.

8 Proposed orders and letters should NOT be electronically filed. Proposed orders, letters, and other similar documents should be sent to the court directly — not filed. Only once your letter is incorporated into an order will it become

part of the docket. Many judges, at least in Rochester, will accept the submissions by e-mail, but it is always advisable to inquire as to the court's preferences beforehand.

9 Be careful of your "S slashes." It will not necessarily be sufficient to simply put an "s/" on the line above the signature line. Yes, we have had something kicked back for the failure to spell out the name of the attorney on the signature line as required by the

rules. This may seem overly-technical, but improper references to the attorney signature may result in a rejection of your submission. Thus, best practices would dictate always providing for a proper "s slash" followed by the attorney's name — i.e. "/s/ attorney name."

10 When in doubt, ask. This is probably the best advice, as the Clerk's Office is always more than willing to help. In fact, in preparing this article, the Clerk's Office was very helpful. I suspect it would prefer to avoid making those next-day phone calls after the submission of a faulty electronic filing, just as much as the practitioner would prefer to avoid receiving them.

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