IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

NOTICE TO COUNSEL
NO. 11-10

APPROPRIATE USE OF
RESTRICTED FILING AND VIEWING LEVELS IN CM/ECF

The United States District Court for the District of Puerto Rico is committed to providing public access to court information, records, and proceedings, including docket information, in compliance with the policies adopted by the Judicial Conference of the United States. In this spirit, the Court implemented the Case Management/Electronic Filing system (CM/ECF) in 2004. The Court also continuously updates CM/ECF with new program releases and other features. One of the most important electronic filing tools is the use of restricted filing and viewing levels. See, Standing Order No. 4 (attached).

Restricted filing and viewing levels is a useful tool which facilitates ready-access to electronic filing while, at the same time, protecting the privacy of certain information offered by the filer. However, it is important to balance these interests mindful of the general principle of publicity which surrounds judicial proceedings. Generally, access to judicial records and proceedings shall not be restricted absent good cause.

The Clerk's Office has noticed that the use of restricted viewing and filing levels has escalated. The data quality screening of the docket entries reveals that restrictions are being utilized unnecessarily. Informative motions concerning vacation time, requests for continuance, and others, are often filed with restrictions. This practice infringes upon the public access to records of proceedings and often creates confusion in the litigation process at both the district and appellate levels.

Prior to selecting a restricted filing and viewing level, members of the bar and other authorized CM/ECF users are encouraged to first ascertain whether a restriction is absolutely necessary. Filing and viewing levels will be closely monitored by the Court's data quality analysts and chambers staff to ensure the removal of unnecessary restrictions.

The Clerk's Office staff is always available to answer questions and clarify doubts concerning all CM/ECF features and tools via the **CM/ECF Hotline: (787)772-3449.**

BY ORDER OF THE COURT.

In San Juan, Puerto Rico, this 2nd day August, 2011.

FRANCES RIOS DE MORAN, ESQ.
CLERK OF COURT

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

IN THE MATTER OF: RESTRICTED FILING AND VIEWING LEVELS.	Misc. No. 03-149 (JAF)

STANDING ORDER NO. 4

This Standing Order addresses the modern reality mandated by the implementation of the CM/ECF system of electronic case filing as it pertains to what was known during the days of the superseded paper practice as "sealed" documents.

Effective November 14, 2007, the Bar will have to conform its "sealed" filings to new procedures, with different levels of restriction at the time of filing in electronic format (restricted filing). The new practice of restricted filing is described as follows.

First, a restricted filing and viewing motion practice module will be placed in operation in regular cases. Second, and independently of the restricted filing and viewing levels, the court will start receiving in electronic format cases that by their very nature require totally-sealed management. Some cases or proceedings in this category include a number of miscellaneous proceedings, a limited number of instances in criminal cases, some civil cases, and Social Security cases.

Both the restricted filing and viewing motion practice and the sealed case management changes are explained below:

I.

A. **Restricted Filing and Viewing Levels in Regular Cases**

The courts have developed updated applications (upgrades) that require filings in regular cases to be made by selecting one of the following restriction levels for viewing:

1. Public
2. Parties
3. Selected Parties
4. Ex-Parte

B. **Level Description**

1. **Public** - The "Public" filing level contemplates no restriction at all. **It is the system's default level.** When a filer chooses to file a document as a "Public" document, everyone will be able to view the document filed.

2. **Parties** - This restriction level limits viewing to participants within the case and court personnel, including the Probation Department. The public cannot view a document filed using this restriction level.

3. **Selected Parties** - In this restriction level, the filer will be able to select which party or parties will have access to the document to be filed. Court staff can also view the document. **Neither the public nor the attorneys of record for parties not selected will be able to view the document filed.**

4. Ex-Parte - When this level is selected, only the attorney filing the document and court personnel will be able to view the document filed.

II.

A. Restricted Filing and Viewing Levels in Sealed Cases

This Order also addresses those cases that in the old paper practice were considered sealed cases. Some illustrative examples of sealed cases were and still are:

1. Miscellaneous filings that by their very nature or by reason of specific laws require private handling. Some proceedings in this category are Grand Jury practice, Title III interceptions, pen register and search warrant proceedings, disciplinary proceedings, and others with similar characteristics.

2. Criminal cases containing a sealed indictment pending further unsealing disposition by the court, and certain magistrate-judge cases that by their very nature require privacy, as in the case of a material witness proceeding.

3. Civil cases which by their intrinsic nature require private handling until otherwise ordered by the court.

Sealed cases, in all their different manifestations, require an initial paper filing which will be scanned and converted into electronic format by court personnel. Other than Social Security cases, sealed cases will be initiated by the in-person filing of the

pertinent document(s) accompanied by a one-time-only motion to seal. Subsequent filings will be electronically submitted without motions to seal.

III.

Notifications

The Clerk's Office Operations Department will give notice of orders and other dispositions through automatic notice of electronic filing (NEF) or, in sealed cases, manual notice by e-mail.

IV.

Cautionary Notice on Docket Entries

Counsel should bear in mind that restricted filings and filings in sealed cases are protected from unauthorized viewing only as it pertains to the document itself (the .pdf version). The docket entry associated with such filing will be public. Therefore, caution should be taken in not revealing the nature of the restricted filing by excessive wording or when selecting the event at the time of creating the docket entry.

An example follows: A Motion for Psychiatric Examination can be identified in at least two ways at the time of the creation of the docket entry. If counsel restricts viewing but chooses "Motion for Psychiatric Examination" from the event menu, the restricted viewer will not be able to view the document, but will be able to figure out the topic of the filing. If the filing is identified in the docket

entry as "Motion Requesting Order" or "Motion for Miscellaneous Relief," without more, said viewer will not be able to identify the content of the restricted filing.

Counsel should be aware and take precautions accordingly.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 9th day of November, 2007.

S/José Antonio Fusté
JOSE ANTONIO FUSTE
Chief U. S. District Judge