

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO
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MEMORANDUM

TO: Members of the Bar
All PACER Users

FROM: José Antonio Fusté 
Chief U.S. District Judge

DATE: November 15, 2007

SUBJECT: Standing Order No. 4, dated November 9, 2007; Misc. No. 03-149 (JAF)

As you know, the live implementation of the CM/ECF Restricted Filing and Viewing Levels module commenced yesterday, November 14, 2007. We have received informal comments from one attorney and at least one newspaper organization, pointing out what appeared to be filings by counsel in contravention to Standing Order No. 4.

In order to alleviate the transition growing pains, I am addressing the Bar and PACER users to highlight important matters in this respect.

1. The process of implementation of this module commenced back in October 2006 by the appointment of a committee which included Clerk's Office staff from the Systems and Operations Departments, Chambers, and the Probation Department, as well as representatives from the Civil and Criminal Bars. Immediately thereafter, we commenced the testing phase with the participation of all members of the committee, reviewing all possible scenarios in dummy cases created from real cases within the CM/ECF test module.

During the beginning of 2007, and after extensive testing, the committee fine tuned the operational aspects and implementation directives. As a result, Standing Order No. 4 was filed effective November 14, 2007.

2. Some of the concerns raised by the Bar and other PACER users during the first day of operation require the following explanation:

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A. The CM/ECF Restricted Filing and Viewing Levels module was not implemented for the convenience of attorneys "not having to travel to the Courthouse to file a sealed motion." The implementation is a CM/ECF national court directive. It is not a local preference; it is a mandated requirement. **As stated in Standing Order No. 4, this module substitutes the old practice of filing "Sealed" documents by the use of different levels of restrictions. All other filings must be filed "Public".**

B. The correct, proper, and wise use of the module preserves the benefits of the superseded sealed paper practice. Any confusion experienced during the first day of module implementation is due to attorneys not having carefully selected the appropriate restriction level in cases where the filing is other than the typical "public" default filing with no viewing restriction.

C. Viewing of the restricted document is convenient. Previously, lawyers with permission to view had to come personally to the Clerk's Office to view documents kept in a vault. Now, authorized viewers may see the documents in the convenience of their offices and, in cases where no access has been granted to a particular party, a simple electronic court order will give the lawyer the necessary access.

D. The module does not interfere with the existing custom of sending copies of motions to the Probation Department. However, I stress that said practice is not necessary. If the proper events are selected at the time of filing, the Probation Department will automatically be notified and, as a court user, Probation will be able to view Probation-related documents.

E. It is imperative that all attorney filers comply strictly with Fed. R. Civ. P. 5 and Fed. R. Crim. P. 49 regarding notice. Notice to interested parties under the rules applies with equal force under CM/ECF. Users of the CM/ECF system are also reminded that improper use of the restriction levels module may affect the rights of third parties, such as the press. Procedures in federal courts are characteristically public in nature. The court will not tolerate and will sanction any attempt to restrict filings that are obviously within the public domain. Failure to observe these rules will not be allowed.

F. Counsel are expected to be fully familiar with Standing Order No. 4. Proper and careful selection of the appropriate restriction level will result in a smooth transition into electronically-restricted practice. The Bar is also advised that any

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improper restriction by a filer can be undone by a judicial officer by means of an order to that effect. Even if an attorney selects a restricted level for a particular filing, adverse parties or parties in interest may move the judicial officer to change the restriction or to convert it to public status. The judicial officer, like in the previous paper sealed practice, retains the authority to accept or refuse such category of filing. In addition, the Quality Control team of docketing experts within the Operations Department of the Clerk's Office will bring to the attention of the judicial officer any filing suspected of restriction in violation of Standing Order No. 4. By the same token, the Bar should police itself. An attorney discovering any improper categorization of a document is obliged to bring it to the court's attention promptly.

G. In sum, **read and become familiar with these procedures**. The Clerk's Office staff is available to assist the Bar and PACER users into an orderly transition. Finally, we inform the Bar and PACER users that cosmetic changes have been incorporated to the restrictions screen for filers to enhance the user-friendliness of the module.

JAF/mrj