UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

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U.S. DISTRICT COURT
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In the Matter of: AMENDMENT TO THE RESTRICTED FILING AND VIEWING LEVELS MODULE	MISC. NO. 03-149(ADC) • Implementing "Motion to Restrict" event • Superseding Standing Order No. 4 and Memorandum Order

STANDING ORDER NO. 9

Background

"Implementation of the Case Management/Electronic Case Files (CM/ECF) system has profoundly changed the way business is conducted in federal courts. It is in use in all appellate, district and bankruptcy courts. It contains 41 million cases, and more than 600,000 attorneys and others have filed using the system." Administrative Office of the U.S. Courts, Next Generation CM/ECF, Additional Functional Requirements Group Final Report (February 27, 2012). One of the main goals of CM/ECF has been to achieve consistency among courts while allowing each the flexibility to individually manage caseloads effectively.

CM/ECF has been successfully utilized in the United States District Court for the District of Puerto Rico since 2004 (Standing Order Nos. 1 and 2 - Docket Nos. 1 and 3). Throughout the years, several modules have been implemented in the district: the Restricted Filing and Viewing Levels Module (Standing Order No. 4 – Docket No. 5); the Electronic Payment of Filing Fees through PAY.GOV (Standing Order No. 5 – Docket No. 9); and the Civil Case Opening Module (Standing Order No. 7 – Docket No. 11). All

stakeholders, internal and external, have reported a high level of satisfaction with the use of these modules.

Methodologies and modules are implemented and revised on an ongoing basis in order to continuously improve and make the system more efficient, to address specific policy and procedural issues, and to maintain the required consistency with overall functional requirements to find and extract data.

The Restricted Filing and Viewing Levels Module

As originally implemented, the Restricted Filing and Viewing Levels Module allows attorney filers to properly and carefully select a restricted filing and viewing level for pleadings at the time of filing in electronic format. Upon implementation of the Restricted Filing and Viewing Levels Module, on November 15, 2007, the Court entered an Order in the form of a Memorandum to the Bar and PACER Users (Docket No. 6) stating, among other things, that: "[I]mproper 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." (Docket No. 6, at p. 2). All judges and data quality analysts in the Clerk's Office actively monitor compliance with this directive; the Clerk's Office also continuously engages in live training sessions to educate attorneys and other filers about all CM/ECF policies with emphasis on the applicable privacy protections and access presumptions to be observed.

Notwithstanding these precautions, the Court has noticed that the use of filing and viewing restrictions has increased in a manner inconsistent with the applicable

privacy and access policies; improper filing and viewing restrictions are being placed. In order to address this practice while preserving the Restricted Filing and Viewing Module, the Court will now require that all filings which require a restriction be accompanied by a separate **Motion to Restrict**.

The procedure to be followed, which is explained below, will provide a uniform procedure pursuant to which all judges of this Court will consider and decide whether filing and viewing restrictions on each document on the Court's docket are appropriate. Restricted filing and viewing motion practice in regular cases does not interfere with the Court's management of sealed cases which include certain categories of: miscellaneous, criminal, and civil cases; and Social Security cases.

Procedure to File a Document Using a Restricted Filing and Viewing Level

-I-

Restricted Filing and Viewing Levels in Regular Cases

Filings in regular cases shall be made by selecting one of the following four restriction levels for viewing:

- **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.
- **Parties**. This restriction level limits viewing to participants within the case and court personnel, including the U.S. Probation Office. The general public will not be able to view a document filed using this restriction level.

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

Motions to Restrict

Permission to utilize a particular restricted filing and viewing level shall be requested by filing a "Motion to Restrict" **which shall be open to public inspection** and shall identify the restriction level sought, address the interest to be protected, and indicate why such interest outweighs the presumption of public access. Stipulations between the parties are insufficient to justify restricted access.

The document for which the restriction is sought shall be filed separately utilizing the level of restriction identified in the Motion to Restrict. The Motion to Restrict itself will remain open to public inspection and, as such, shall not include the restricted document as an attachment.

If the Court grants the Motion to Restrict, the separately filed document shall retain the restriction level. If the Court denies the Motion to Restrict, the restriction level shall be removed or modified as ordered by the Court.

-III-

Restricted Filing and Viewing Levels in Sealed Cases

"Sealed cases" are those cases which carry a full or total restriction. "Sealed cases" can only be viewed by the judge, those attorneys who have been expressly granted sealed access to the case, judge-designated staff, and a few select administrative Court personnel. Some examples are:

- Miscellaneous cases which, by their very nature or by reason of a specific law, require private handling such as: Grand Jury practice, Title III interceptions, pen registers and search and seizure (including tracking) warrants, and attorney disciplinary proceedings.
- Criminal cases which include a sealed indictment pending the unsealing by the Court.
- Magistrate Judge cases which, by their very nature, require privacy, such as material witness proceedings.
- Civil cases which, by their intrinsic nature, require private handling until otherwise ordered by the Court.

"Sealed cases" require an initial paper filing which will be received and scanned by Court personnel for electronic filing. Other than Social Security cases, "sealed cases" will be initiated by an in-person filing of a document or documents, accompanied by a one-time-only "Motion to Seal." Once this one-time-only Motion to Seal is granted, subsequent filings will be electronically submitted without the filing of additional motions to seal.

-IV-

Notices of Electronic Filing

In regular cases, CM/ECF gives notice of orders and other dispositions through automatic notices of electronic filings (NEFs).

In "sealed cases", CM/ECF does not automatically generate NEFs; instead, filers must give manual notice to other parties involved by e-mail or other means, and include this information in the Certificate of Service.

-V-

The Docket Entries

Restricted filings in regular cases are protected from unauthorized viewing only as it pertains to the document itself (the PDF version). The docket entry associated with such filing, however, will be public. Therefore, caution should be taken to not reveal the nature of the restricted filing itself by excessive wording within a docket entry or when selecting the applicable event when filing.

For example, a "Motion for Psychiatric Examination" can be identified in at least two ways at the time of the creation of its docket entry. If counsel restricts viewing but chooses "Motion for Psychiatric Examination" from the event menu, although the restricted viewer will not be able to view the document he or she will know its topic. If, in the alternative, the filing is identified in the docket entry as a "Motion Requesting Order" or a "Motion for Miscellaneous Relief," without more, the restricted viewer will not be able to view the document or know the topic or the content of the restricted filing.

In "sealed cases," only authorized attorneys and Court users will have access to the docket and to the documents filed. The docket will not be open to inspection by the general public.

WHEREFORE, Standing Order No. 4 (Docket No. 5) and the Order entered as a Memorandum to the Bar and PACER Users (Docket No. 6) are superseded by Standing Order No. 9, which amends the Restricted Filing and Viewing Levels Module implemented by the Court by requiring filers to file a Motion to Restrict identifying the restricted level sought for a particular separately filed document.

Implementation of Standing Order No. 9 shall be made effective February 1, 2013.

The Clerk shall give notice of this Standing Order to all members of the bar and PACER users by mass email to the bar and web publication.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 30th day of January, 2013.

AIDA M. DELGADO-COLON
CHIEF UNITED STATES DISTRICT JUDGE