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November 10, 2004

MEMORANDUM TO ALL CHIEF JUDGES, UNITED STATES COURTS

**SUBJECT: Compliance with Website Requirements of the E-Government Act
(INFORMATION)**

As I first reported to you in a memorandum dated March 5, 2003, the E-Government Act of 2002, which establishes a broad framework for the use of technology to enhance public access to government information, places specific demands on the judiciary. The relevant portion of the Act, Section 205 (a), is included as an attachment for your reference.

The Act requires the Chief Justice of the United States and chief judges of each circuit, district and bankruptcy court, by April 16, 2005, to establish and maintain a website that provides the public with access to the following information directly or through links to other websites:

- the location and contact information for the courthouse, including the telephone numbers and contact names for the clerk's office and justices' or judges' chambers;
- the local rules and standing or general orders of the court;
- the individual rules, if in existence, of each justice or judge in that court;
- access to docket information for each case; and
- any other information (including forms in a format that can be downloaded) that the court determines useful to the public.

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The Act also requires that this website provide access to the substance of all written opinions issued by the court, regardless of whether such opinions are to be published in the official court reporter, in a text searchable format. This applies to all written opinions issued after April 16, 2005. The Executive Committee of the Judicial Conference asked the Committees on Court Administration and Case Management and Information Technology to develop guidelines to assist the courts in complying with the requirement relating to opinions. The committees developed recommendations for a definition of "written opinion," as well as for how courts can satisfy the searchability requirement which were approved by the Executive Committee on behalf of the Conference by mail ballot concluded on October 26, 2004. The guidance is as follows:

For the purposes of the E-Government Act of 2002, the official guidance is that "written opinion" is defined as, "any document issued by a judge or judges of the court, sitting in that capacity, that sets forth a reasoned explanation for a court's decision." This definition is clarified by the following points:

1. The responsibility for determining which documents meet this definition rests with the authoring judge, and the determination should be made at the time the document is filed;
2. The decision as to whether a document meets this definition is not the same as the decision about whether an opinion is to be published;
3. The definition is expressly intended to cover reports and recommendations issued by magistrate judges at such time as any action is taken by a district judge on a report and recommendations issued by a magistrate judge, and also includes a summary order adopting such report and recommendations;
4. The definition is not intended to include routine, non-substantive orders such as scheduling orders or rulings on motions for extension of time; and
5. In the courts of appeals, only those documents designated as opinions of the court meet the definition of "written opinion."

A combination of CM/ECF and the PACER systems may be used to satisfy the searchability requirement, as these systems allow for searching within a document. CM/ECF only accepts documents in portable document format (PDF) which is text

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searchable except for scanned documents.¹ CM/ECF will be modified to ask a user filing on behalf of a judge whether the document being filed meets the definition of "written opinion" at the time of docketing in CM/ECF. Recognizing that CM/ECF will not be fully implemented by April 2005, a limited number of courts may need to seek deferrals, which the statute permits, as described below.²

Although all appellate, district and bankruptcy courts have websites, not all of these websites contain the specific information required as outlined above. I am reminding you of these requirements at this time in order to provide your court with ample time to work on its website. I strongly encourage all courts to review the information required by the Act and make every effort to have this information available on your court's website by April 16, 2005.

As noted above, the Act does establish a process by which a court can defer compliance with these obligations. The process requires the chief judge of a court to submit a notification to the Administrative Office of the United States Courts to defer compliance with requirements of the Act for his or her court.³ The Act requires the notification to state the reasons for the deferral and the online methods, if any, or any alternative methods, such court is using to provide greater public access to information.

¹ Files created by electronically converting word processing documents to PDF are text searchable. However, documents scanned into PDF format are not readily text searchable. This is a potential issue, as some judges prefer to print their opinions, sign them, and scan them into the system. For those judges, a scanned signature page could be inserted into the text PDF document as a substitution for the page that would contain the '/s/' signature. While this last page will not be searchable, the substance of the opinion will be, thus meeting the Act's searchability requirement while preserving the judge's choice of signature.

² Of the 94 district courts, 56 are currently using CM/ECF, and 37 are in the process of implementing it. Of the 94 bankruptcy courts, 76 are currently using CM/ECF, and 18 are in the process of implementing it. Further, a number of courts that are not currently using CM/ECF have developed their own searchable opinions database, such that they may not need to request a deferral from this requirement. While the courts of appeals are not currently using CM/ECF and will not be fully operational on the system until 2006, each circuit has opinions available in a format that will satisfy the Committee's determination as to searchability.

³ Pursuant to Section 205(g)(1)(B), courts cannot seek a deferral from the obligation to keep the information on that site current as required by Section 205(b)(1).

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The judiciary must then submit to Congress all deferral notices received, together with a summary and evaluation of all notices. Deferral notices and the report to Congress must be submitted annually.

The Administrative Office will provide you with additional information regarding the deadline for deferrals, as well as a form for submission of a deferral notice. If you have any questions regarding the E-Government Act or this memorandum please contact Katie Simon at 202-502-1563, or via email at [Katie Simon/DCA/AO/USCOURTS](mailto:Katie.Simon/DCA/AO/USCOURTS).



Leonidas Ralph Mecham

Attachment

cc: Circuit Executives
District Executives
Clerks, United States Courts

ATTACHMENT 1**SEC. 205. FEDERAL COURTS.**

6. (a) **INDIVIDUAL COURT WEBSITES-** The Chief Justice of the United States, the chief judge of each circuit and district and of the Court of Federal Claims, and the chief bankruptcy judge of each district shall cause to be established and maintained, for the court of which the judge is chief justice or judge, a website that contains the following information or links to websites with the following information:

- (1) Location and contact information for the courthouse, including the telephone numbers and contact names for the clerk's office and justices' or judges' chambers.
- (2) Local rules and standing or general orders of the court.
- (3) Individual rules, if in existence, of each justice or judge in that court.
- (4) Access to docket information for each case.
- (5) Access to the substance of all written opinions issued by the court, regardless of whether such opinions are to be published in the official court reporter, in a text searchable format.
- (6) Access to documents filed with the courthouse in electronic form, to the extent provided under subsection (c).
- (7) Any other information (including forms in a format that can be downloaded) that the court determines useful to the public.

(b) **MAINTENANCE OF DATA ONLINE-**

- (1) **UPDATE OF INFORMATION-** The information and rules on each website shall be updated regularly and kept reasonably current.
- (2) **CLOSED CASES-** Electronic files and docket information for cases closed for more than 1 year are not required to be made available online, except all written opinions with a date of issuance after the effective date of this section shall remain available online.

(c) **ELECTRONIC FILINGS-**

- (1) **IN GENERAL-** Except as provided under paragraph (2) or in the rules prescribed under paragraph (3), each court shall make any document that is filed electronically publicly available online. A court may convert any document that is filed in paper form to electronic form. To the extent such conversions are made, all such electronic versions of the document shall be made available online.

(2) **EXCEPTIONS-** Documents that are filed that are not otherwise available to the public, such as documents filed under seal, shall not be made available online.

(3) **PRIVACY AND SECURITY CONCERNS-** (A)(i) The Supreme Court shall prescribe rules, in accordance with sections 2072 and 2075 of title 28, United States Code, to protect privacy and security concerns relating to electronic filing of documents and the public availability under this subsection of documents filed electronically.

(ii) Such rules shall provide to the extent practicable for uniform treatment of privacy and security issues throughout the Federal courts.

(iii) Such rules shall take into consideration best practices in Federal and State courts to protect private information or otherwise maintain necessary information security.

(iv) To the extent that such rules provide for the redaction of certain categories of information in order to protect privacy and security concerns, such rules shall provide that a party that wishes to file an otherwise proper document containing such information may file an unredacted document under seal, which shall be retained by the court as part of the record, and which, at the discretion of the court and subject to any applicable rules issued in accordance with chapter 131 of title 28, United States Code, shall be either in lieu of, or in addition, to, a redacted copy in the public file.

(B)(i) Subject to clause (ii), the Judicial Conference of the United States may issue interim rules, and interpretive statements relating to the application of such rules, which conform to the requirements of this paragraph and which shall cease to have effect upon the effective date of the rules required under subparagraph (A).

(ii) Pending issuance of the rules required under subparagraph (A), any rule or order of any court, or of the Judicial Conference, providing for the redaction of certain categories of information in order to protect privacy and security concerns arising from electronic filing shall comply with, and be construed in conformity with, subparagraph (A)(iv).

(C) Not later than 1 year after the rules prescribed under subparagraph (A) take effect, and every 2 years thereafter, the Judicial Conference shall submit to Congress a report on the adequacy of those rules to protect privacy and security.

(d) **DOCKETS WITH LINKS TO DOCUMENTS-** The Judicial Conference of the United States shall explore the feasibility of technology to post online dockets with links allowing all filings, decisions, and rulings in each case to be obtained from the docket sheet of that case.

(e) **COST OF PROVIDING ELECTRONIC DOCKETING INFORMATION-** Section 303(a) of the Judiciary Appropriations Act, 1992 (28 U.S.C. 1913 note) is amended in the first sentence by striking 'shall hereafter' and inserting 'may, only to the extent necessary,'.

(f) **TIME REQUIREMENTS-** Not later than 2 years after the effective date of this title, the websites under subsection (a) shall be established, except that access to documents filed in electronic form shall be established not later than 4 years after that effective date.

(g) **DEFERRAL-**

(1) **IN GENERAL-**

(A) **ELECTION-**

(i) **NOTIFICATION-** The Chief Justice of the United States, a chief judge, or chief bankruptcy judge may submit a notification to the Administrative Office of the United States Courts to defer compliance with any requirement of this section with respect to the Supreme Court, a court of appeals, district, or the bankruptcy court of a district.

(ii) **CONTENTS-** A notification submitted under this subparagraph shall state--

(I) the reasons for the deferral; and

(II) the online methods, if any, or any alternative methods, such court or district is using to provide greater public access to information.

(B) **EXCEPTION-** To the extent that the Supreme Court, a court of appeals, district, or bankruptcy court of a district maintains a website under subsection (a), the Supreme Court or that court of appeals or district shall comply with subsection (b)(1).

(2) REPORT- Not later than 1 year after the effective date of this title, and every year thereafter, the Judicial Conference of the United States shall submit a report to the Committees on Governmental Affairs and the Judiciary of the Senate and the Committees on Government Reform and the Judiciary of the House of Representatives that--

(A) contains all notifications submitted to the Administrative Office of the United States Courts under this subsection; and

(B) summarizes and evaluates all notifications.



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ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

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April 7, 2005

**MEMORANDUM TO: JUDGES, UNITED STATES DISTRICT COURTS
JUDGES, UNITED STATES BANKRUPTCY COURTS
UNITED STATES MAGISTRATE JUDGES**

**SUBJECT: Compliance with the April 2005 E-Government Act Requirements
Regarding Access to the Substance of All Written Opinions Via
CM/ECF (INFORMATION)**

This memorandum provides additional information regarding compliance with the website requirements of the E-Government Act of 2002 and serves as a follow-up to my earlier memoranda of November 10, 2004 and December 28, 2004. As those earlier memoranda noted, the E-Government Act requires that the chief judges of each circuit, district, and bankruptcy court establish and maintain a website for the court that provides public access, directly or through links to other websites, to specific information, including, *inter alia*, access to the substance of all written opinions issued by the court. Opinions must be made available in a text searchable format. These requirements will become effective on April 16, 2005.

As explained in the November 10, 2004 memorandum, "written opinion" for the purposes of the E-Government Act has been defined by the Judicial Conference as "any document issued by a judge or judges of the court sitting in that capacity, that sets forth a reasoned explanation for a court's decision."¹ **The responsibility for determining which documents meet this definition rests with the authoring judge.** The determination should be made at the time the document is filed.

¹ Further information on the definition of "written opinion" and requirements for satisfying the searchability requirement as determined by the Judicial Conference can be found in the November 10, 2004 memorandum, located on the J-Net at http://jnet.ao.dcn/Memos/2004_Archive/Dir4149.html

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District courts that are live on CM/ECF by April 16, 2005 are well positioned for compliance with this requirement of the E-Government Act. Version 2.4 of the CM/ECF district software, released on March 24, 2005, includes a modification that will automatically designate a small number of documents (such as Memorandum Opinions) as written opinions as they are filed by the court. For many other documents that may fall within the Judicial Conference definition, the system will query each judge (or court user filing on behalf of a judge) as to whether the document being filed meets the definition of "written opinion." If the filer designates the document as a "written opinion" it will be specially marked in the system and made available without charge to members of the public via PACER through a new report option.²

Bankruptcy courts will receive an upgraded version of the CM/ECF software containing the ability to mark opinions in the release of bankruptcy Version 3 later this year. As an interim measure, bankruptcy courts will receive information regarding a simple dictionary change that can be made by court staff to allow the automatic designation of documents specified by the court as "written opinions." However, this dictionary change will not generate the query to the filer as to whether the document meets the definition of "written opinion." All documents filed by the court under the modified dictionary event will automatically be designated as "written opinions." Thus, bankruptcy judges will need a method to indicate to whoever is filing the document whether it meets the definition so it can be filed under the correct event.

There are several methods district and bankruptcy CM/ECF courts may use for designating documents as "written opinions," depending upon their current methods for filing, including:

- If the judge who authored the opinion is filing it in CM/ECF directly, the judge could simply answer the "written opinion" query in the affirmative and the system will automatically mark the document. If the bankruptcy judge who authored the opinion is filing it directly, he or she can use the specially modified dictionary event to ensure the document will be designated as a "written opinion."

² As explained in the November 10, 2004 memorandum, a combination of CM/ECF and the PACER system may be used to satisfy the searchability requirement for all documents that are created in portable document format (pdf) text. However, for judges that prefer to print opinions, sign them, and have them scanned into the system, a scanned signature page could be inserted into a text pdf document. While the last page would not be searchable, the substance of the opinion would be, meeting the E-Government Act's requirement while preserving individual judges' signature preferences.

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- If a judicial assistant, law clerk, or courtroom deputy files the opinion for the judge for whom they work, at the time the judge indicates the opinion is finalized and ready for filing, the judge could also indicate to his or her staff whether the document meets the definition of "written opinion."
- The judge who authored the opinion (or judicial assistant or law clerk who prepared it), could add the word "opinion" to the title of the document before finalizing it, allowing whoever is filing it to know with a glance at the title whether it should be marked as a "written opinion." For example, if an order on a motion meets the Judicial Conference definition and should be designated as a "written opinion," instead of being titled "Order on Motion," it could be titled "Order and Opinion on Motion."
- If a judge (or his or her staff) places the opinion in a folder on a shared drive, the judge (or his or her staff) might add a suffix to the name of the document. For example, if the naming convention for an order in a case were generally the file name, pleading type, and date, i.e., 05CV42order0217, courts could add a "-WO" suffix (i.e., 05CV42order0217-WO) for a document that should be designated as a "written opinion," so that the docket clerk entering the opinion could make the correct designation in CM/ECF.
- Similarly, if a judge (or his or her staff) places the opinion in a folder on a shared drive, the court could add a second folder for each case for documents that meet the "written opinion" definition, i.e., instead of one folder for case 05-CV-41, there could be a second folder, entitled 05-CV-41-WO.

If you have questions about the E-Government Act, please contact Katie Simon at (202) 502-1563 or via email at *Katie Simon/DCA/AO/USCOURTS*.



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cc: District Court Executives
Clerks, United States District Courts
Clerks, United States Bankruptcy Courts