



Teaching Civil Procedure with PACER

Susan E. Hauser
Associate Professor, NCCU School of Law

Institute for Law Teaching and Learning
Spring 2012 Conference: Technology in and Beyond the Classroom

March 3, 2012

Summary

First-year law students typically have little or no prior exposure to the litigation process. This lack of context can make Civil Procedure a difficult course that, for some students, disintegrates into a confusing jumble of disconnected rules, statutes, and cases. This confusion resolves when students are exposed to the real world of litigation; however, it is difficult to capture this experience in the first-year Civil Procedure course. As a result, professors who teach Civil Procedure face the challenge of explaining the components of a real-world process that most students cannot yet visualize.

PACER (Public Access to Court Electronic Records) is an electronic public access service maintained by the federal judiciary. The federal courts now require attorneys to electronically file all pleadings, motions, and other court documents using an electronic filing system known as CM/ECF (Case Management/Electronic Case Filing). PACER lets users view these documents (typically as .pdf files) and obtain live case and docket information from all federal appellate, district, and bankruptcy courts.

For the past three years, I have used PACER to illustrate the civil litigation process in my Civil Procedure class. I am fortunate to teach in a classroom that allows me to access the internet and examine live case dockets during class. This vividly illustrates the litigation timeline to students in a way that is practical and useful. My presentation is intended to demonstrate how PACER works, explain how it connects students to the litigation process, and show how it can be used to make the Rules of Civil Procedure come to life.

Because PACER allows students to study real court files, it can be used to provide context for the Rules of Civil Procedure. PACER gives students access to .pdf images of every document filed in a case, including the complaint and summons, the answer and any pre-answer motions, appearances by counsel, scheduling orders, discovery disputes, dispositive motions, responses to motions, interlocutory orders, and judgments. Students can also study the docket itself, which helps them to understand litigation as a process. Finally, because PACER provides a window into

pending cases, students can follow developments in the litigation as they unfold in real time.

The primary downside of PACER as a teaching tool is that access to current information is not free to educators. The Western District of New York maintains a free training database; however, the material on this database was captured in 2007 and is, therefore, somewhat dated. For live information, PACER currently charges an Internet access fee of \$0.08 per page, which is charged when documents are viewed. Fees are capped at \$2.40 for any single document, and no fee is charged unless an account holder's fee exceeds \$10 per quarter.

Guide to Web Resources

The federal courts free PACER Training Database can be found at: <https://dcecf.psc.uscourts.gov/cgi-bin/ShowIndex.pl>. The site has been populated with real case data from the Western District of New York using cases filed between 1/1/2007 and 7/1/2007.

The official PACER website is located at: <http://www.pacer.gov/cmecf/>. The information that follows has been excerpted from that site.

“The Case Management/Electronic Case Filing (CM/ECF) system is the Federal Judiciary's comprehensive case management system for all bankruptcy, district and appellate courts. CM/ECF allows courts to accept filings and provide access to filed documents over the Internet.

CM/ECF keeps out-of-pocket expenses low, gives concurrent access to case files by multiple parties, and offers expanded search and reporting capabilities. The system also offers the ability to: immediately update dockets and make them available to users, file pleadings electronically with the court, and download documents and print them directly from the court system.”

CM/ECF FAQs: <http://www.pacer.gov/psc/efaq.html#CMECF>

What is CM/ECF?

In January 1996, the Administrative Office of the U.S. Courts began

development of the Case Management/Electronic Case Filing (CM/ECF) system. CM/ECF is a comprehensive case management system that allows courts to maintain electronic case files and offer electronic filing over the Internet. Courts can make all case information immediately available electronically through the Internet. Eventually, CM/ECF will replace the current case management systems used by the federal courts across the country.

Why Electronic Case Files?

Judges, court staff, and the public now have the capability to access electronic docket information, case management data and legal research materials. As most documents are now initially created first in electronic form, the federal courts can further reduce the reliance on paper records by establishing electronic case file systems. These systems enhance the accuracy, management and security of records, reduce delays in the flow of information and achieve cost savings for the judiciary, the bar and litigants.

What are the benefits and features of using CM/ECF?

There are a number of significant benefits and features:

- Courts can allow registered attorneys to file documents 24 hours a day, 7 days a week.
- Reduction of paper, photocopy, postage and courier costs.
- Full case information is available immediately to attorneys, parties, and the general public through the Internet. This includes the ability to view the full text of most filed documents.
- Attorneys on the system will receive email notices electronically in CM/ECF cases. This greatly speeds delivery and eliminates the costs to both the court and attorneys of handling and mailing paper notices.
- Multiple parties can view the same case files simultaneously.
- Since CM/ECF uses Internet standard software, the out-of-pocket cost of participation for attorneys is typically very low.

What courts provide a CM/ECF system?

CM/ECF is available in most district, bankruptcy and appellate courts. For a complete list of the CM/ECF courts, visit:

<http://www.pacer.gov/cmecf/ecfinfo.html>

What is the cost for using CM/ECF?

There is no additional fee associated with the filing aspect of the CM/ECF system.

The Judicial Conference of the United States approved an Internet access fee of \$0.08 per page. This access fee applies to information retrieved through the system for all users. Attorneys of record and parties in a case

(including pro se litigants) receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. Effective April 2010, no fee is owed until an account holder accrues charges of more than \$10.00 in a quarter.

Public Access to Court Electronic Records (PACER) is an electronic public access service that allows users to obtain case and docket information from Federal Appellate, District and Bankruptcy courts, and from the U.S. Party/Case Index via the Internet. Access to all courts is provided from this web site. Electronic access is available by registering with the PACER Service Center, the judiciary's centralized registration, billing, and technical support center.

Each court maintains its own databases with case information. Because PACER database systems are maintained within each court, each jurisdiction will have a different URL. Accessing and querying information from each service is comparable; however, the format and content of information provided may differ slightly.

PACER is a service of the United States Judiciary. The PACER Service Center is operated by the Administrative Office of the United States Courts.

Can users determine how large the documents are before they are accessed in PACER and the charge that will be incurred?

Yes. When a document link is accessed, the next screen will display information regarding the number of billable pages and the related cost. To accept the charges, click on the **View Document** button. The PACER cost is \$0.08 per page with a cap of \$2.40 per document, except transcripts.

How are electronic documents served?

In most filings, the CM/ECF system generates a Notice of Electronic Filing (in district and bankruptcy cases) or a Notice of Docket Activity (in appellate cases) -- an email message containing a hyperlink to the document filed -- whenever a document is filed with the court. It is up to individual courts whether this Notice can be used to serve parties. Most courts are permitting this.

What am I charged for in CM/ECF?

Public users of the CM/ECF system are charged \$0.08 per page for the results of your search on case specific information. Examples of case specific information are the docket sheet, the PDF copies of filed documents, and the cases report. Public users are not charged for filing

documents using CM/ECF or for viewing calendar information. There is a cap of \$2.40 (30 pages) for a single document or case specific report including docket sheets. Each attachment in CM/ECF is considered a separate document. Therefore the cap will apply to each attachment over 30 pages separately.

What constitutes a page in CM/ECF for billing purposes?

Any information extracted from the CM/ECF database, such as the data used to create a docket sheet, is billed using a formula based on the number of bytes extracted. For a PDF document, the actual number of pages are counted to determine the number of billable pages.

For report data retrieved from the CM/ECF system that is printed, the print job will not always match the number of pages billed. The number of pages printed is dependent on individual printer and browser settings. All users are charged equally for the same information regardless of the browser settings or printer configurations. A transaction receipt and the **Review Billing History** option are provided in each court site for reviewing charges. Also, **Review Transaction History** is available on this site in **Manage My PACER Account** for reviewing transactions from all courts. The transactions are updated on the PACER Web Site by the middle of each month.