

# PACER, CM/ECF, NextGen, and Best Practices for NextGen Accounts

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## I. Introduction

PACER is an acronym for Public Access to Court Electronic Records. PACER allows users to view, print, or download substantially all docket records and documents filed in substantially all United States federal courts, since the inception of electronic records.

PACER is maintained by the Administrative Office of the U.S. Courts. The Administrative Office is the agency within the judicial branch that provides a broad range of legislative, legal, financial, technology, management, administrative, and program support services to federal courts. Judicial Conference committees, with court input, advise the Administrative Office as it develops the annual judiciary budget for approval by Congress and the President. The Administrative Office is responsible for carrying out Judicial Conference policies.<sup>1</sup>

CM/ECF is an acronym for Case Management/Electronic Case Files. CM/ECF is a system enabling the filing of documents with many federal courts, using the Internet.

"NextGen," or the NextGen Case Management/Electronic Case Files (CM/ECF) system, refers to a relatively new Web interface and back end functionality which allows the same account to access PACER and file electronic documents in federal courts. Not all federal courts are yet compatible with NextGen. Their integration into NextGen is ongoing. PACER accounts existing prior to NextGen are referred to herein as legacy PACER accounts.

The integration of PACER and CM/ECF requires certain changes to user accounts and financial accounting practices that substantially impact organizations having users that file documents in courts. This article was prompted by those changes. At a high level, those changes require each NextGen user to have their own individual account, but provide an option for integration of charges to a single administrative billing account.

## II. PACER Policy

PACER is governed by a Usage policy set by the Judicial Conference of the United States.

### II.A PACER Charges and Accounting

Currently the Judicial Conference sets a ten cent per page charge and a \$2.40 per audio file charge, for PACER documents. The per-page charge applies to the number of pages that results from any search, regardless of the number of pages viewed, printed, or downloaded. Searches that result in no matches incur a charge for one page of data. Usage is billed on a quarterly basis. Pursuant to Conference policy, no account is billed for usage of less than \$15 in a quarter. PACER provides details of transaction information (in the "Manage My Account" section). PACER charges credit-card-on-file PACER accounts quarterly. PACER invoices non credit-card-on-file accounts quarterly, by emailing invoices to the email address of record.

Payments must be then made online via the user's PACER account.

A problem with quarterly invoicing is that is not consistent with monthly accounting practice. Many contracts between lawyers and their clients require monthly invoicing, which requires charging expenses to clients in or close to the month in which the expense is accrued.

## II.B Usage Policy - Individual account

A *NextGen* PACER user account is generally for personal use only. A user noticing unauthorized account usage must contact the PACER Service Center immediately by emailing [PACER@psc.uscourts.gov](mailto:PACER@psc.uscourts.gov) or calling (800) 676-6856.

Legacy PACER accounts were not limited to personal use. However, NextGen is forcing conversion of the legacy PACER accounts to NextGen accounts.

## II.C Policy - Administrative Account

PACER provides for a PACER Administrative Account (PAA) to facilitate collective billing at an organizational level, for linked PACER user accounts. An organization's PAA will allow the organization to receive a single invoice for charges from all accounts under its PAA. However, if the balance due on the PAA has not been paid, PACER service for all accounts linked to the PAA will be suspended and no new accounts can be linked to the PAA until payment is made.<sup>2</sup>

## III. Doing Business with a NextGen Court

For non-NextGen courts, until now, attorneys used their personal CM/ECF account associated with that court to file documents over the Internet in cases in that court.

When a court announces it is converting to NextGen, the attorney's personal account with that court will no longer allow filing of documents. The attorney must at that time (or prior to that time), obtain a PACER account or upgrade their existing PACER account.<sup>3</sup> Upgrading a PACER account will require complying with stricter username and password criteria (number and types of characters) and supplying answers to security questions. However, upgraded PACER accounts *cannot* be used by more than one user to file documents in courts. As stated on the PACER website:<sup>4</sup>

[Q.] We share PACER accounts in my firm/office. Can we continue to do this in NextGen CM/ECF?

[A.] If you intend to e-file, you are required to have your own PACER account *because your PACER account will be linked to your e-filing account.*

Emphasis added.

Upon upgrading from the legacy PACER account, the user can associate the courts to which the user is an admitted attorney and update that user's admission information. That association is a pre-requisite for the user being able to file documents in cases in that court.

The online advice from PACER indicates that a user can determine if a court is a

NextGen Court by checking for "NextGen" adjacent the court's name on <https://www.pacer.gov/psco/cgi-bin/links.pl>. However, other things can trigger a requirement to update from a legacy PACER account to NextGen.

#### IV. Another Trigger Requiring NextGen Account Upgrades

Our firm recently changed its postal address. Early in July, 2016, I received a notice on a filing in the Court of Appeals for the Federal Circuit (CAFC) that my attorney address information in the filing with the CAFC was inconsistent with PACER information associated with my CAFC user account. I had to update the address information in PACER. PACER required me to upgrade my firm's legacy PACER account to a NextGen account, in order to update my attorney address information for the CAFC. That converted the firm's legacy PACER account to my personal user NextGen account. So that account can no longer be used by firm-wide, for PACER database searching. Presumably, there are yet other things that could trigger a requirement to upgrade legacy PACER accounts.

Consequently, law firms and attorneys should anticipate being required to upgrade to NextGen, even when not filing in NextGen courts.

#### V. Organizational Structure of Accounting, and PACER/NextGen Accounts

Under NextGen, attorneys must have their own PACER/NextGen user account, and must in that account associate the courts in which they are admitted to practice as a prerequisite to filing documents in those courts.

One question is whether it makes sense for an organization to have and use a PAA for cumulating charges from plural users into a single invoice. The answer to that question depends in large part upon the internal organization and policies of the organization. Do the individuals that have PACER/NextGen user account also have organization issued credit card accounts? Are those individuals liable to pay their PACER/NextGen costs themselves, or not? Does the organization need to charge PACER/NextGen costs to internal and/or external accounts? What risks are associated with centralized payment? What are the organization's contractual limits on time to charge back expenses?

#### VI. My Law Firm's Philosophy

My philosophy for my law firm is to provide for individual attorney accountability and empowerment while avoiding to the extent possible risk of loss. My firm policy continues to be to provide attorneys as much independence and authority as possible, while providing them centralized resources, to assist in their practice. My philosophy favors not using a PAA for invoicing. My policy favors attorneys using their individual firm issued credit cards to pay for their NextGen charges. That allows the attorneys to control the billing information while providing relatively efficient accounting.

Using a PAA might result in denial of an attorney's NextGen account access in the event that the organization's invoice was not timely paid. That might occur, for example, if the credit card on file in the PAA account had a lapsed expiration date. That could result in a missed

deadline due to an inability of the attorney to file a document.

I would rather each attorney be responsible for maintaining payment credentials in their own user account, since that would empower the attorney to resolve a payment credential problem in real time, and avoid the potential for loss of rights.

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1.As stated on <http://www.uscourts.gov/about-federal-courts/judicial-administration>.

2. See <https://www.pacer.gov/announcements/general/paanews.html>

3.As noted at <https://www.pacer.gov/nextgen/> and from personal experience.

4. See <https://www.pacer.gov/nextgen/>