

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

IN RE:

LR-25-02


AMENDMENT OF CM/ECF RULES

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ORDER

Pursuant to 28 U.S.C. § 2071, it is hereby **ORDERED** that the Electronic Case Filing Rules and Procedures of the United States District Court for the Eastern District of Tennessee is amended to read as attached.

SO ORDERED.



TRAVIS R. MCDONOUGH
CHIEF UNITED STATES DISTRICT JUDGE

**ELECTRONIC CASE FILING RULES AND PROCEDURES
OF THE
UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF TENNESSEE**

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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE**

ELECTRONIC CASE FILING RULES AND PROCEDURES

1. Scope

These policies and procedures apply to all civil, criminal, and miscellaneous cases. *See* E.D. Tenn. L.R. 5.2(e).

2. Definitions

- 2.1 "Electronic Filing System" means the Court's automated system for receipt, retention and retrieval of documents filed in electronic form.¹
- 2.2 "Filing Error" means an error in submission of a filing to the Electronic Filing System, *e.g.*, a filing with an incorrect case number, with an incorrect docket entry or with the wrong PDF file attached to a docket entry.
- 2.3 "E-Filer" means an individual registered with the Public Access to Court Electronic Records ("PACER") system to whom the Court has granted access to the Court's Electronic Filing System for all permitted purposes.
- 2.4 "Notice of Electronic Filing" means the electronic notice generated by the Electronic Filing System which is e-mailed to participating E-Filers at the time a document is filed with the system. The Notice of Electronic Filing sets forth the time the document is filed, the names of the party and attorney filing the document, the type of document filed, the text of the docket entry describing the document as it will appear on the Court's docket, the name of each recipient of the Notice and an electronic link to the filed document allowing the recipients to retrieve the filed document.

¹ The system is part of the Next Generation of Case Management/Electronic Case Files ("CM/ECF") application developed for the federal judiciary by the Administrative Office of the United States Courts.

- 2.5 "PACER" ("Public Access to Court Electronic Records") is an electronic public access service established by the Administrative Office of the United States Courts that allows access to federal court records, including those filed through the Electronic Filing System. Any person establishing a PACER account will be able to view, print and download information filed with the Electronic Filing System over the Internet.
- 2.6 "PDF" means Portable Document Format. "PDF text format" means a text-searchable PDF file generated from an original word-processing file.
- 2.7 "Technical Failure" means a malfunction of the **Court's** Electronic Filing System or the telecommunications facilities through which the system is accessed which prevents an E-Filer from filing a document electronically. Technical Failure does not include a malfunction of an **E-Filer's** computer and/or telecommunications facilities which prevents an E-Filer from electronically filing a document.

3. [Abrogated]

4. Scope of Electronic Filing

4.1.1 General

Except as expressly provided herein, by local rule, by order of the Court, or in exceptional circumstances (such as a Technical Failure), an E-Filer shall electronically file all documents required to be filed in all civil, criminal, and miscellaneous cases.

4.1.2 Format

Documents filed in CM/ECF must be in PDF format. Briefs and motions must be filed in PDF text format and not created by scanning. Whenever possible, other documents should also be in PDF text format. An E-Filer must verify that a scanned document is an accurate representation of the original document prior to filing it. See the User's Manual for further information.

4.2 Maximum Size of Filings

Filed documents cannot be greater than 50 MB in size. Documents greater than 50 MB in size must be divided into separate documents less than 50 MB in size.² *See also* Section 4.10.

4.3 Criminal Complaints

The original complaint signed by the agent and the magistrate judge shall be submitted to the Clerk's Office which will scan and file the electronic copy in CM/ECF. The original will be transferred to the United States Attorney's Office.

4.4 Informations

The original information signed by the U.S. Attorney will be submitted to the Clerk's Office which will scan and file the electronic copy in CM/ECF. The original will be transferred to the United States Attorney's Office.

4.5 Indictments

The original indictment signed by the foreperson will be scanned by the Clerk's Office with the jury foreperson's signature redacted and filed in CM/ECF as a public document. The original, unredacted indictment will be scanned and filed in CM/ECF under seal. The original indictment will be transferred to the United States Attorney's Office.

All copies of indictments that must be partially redacted before being served on a defendant must be redacted by the U.S. Attorney's Office. The redaction shall include redaction of the foreperson's signature.

4.6 Exhibits and Attachments

E-Filers shall file in electronic form all exhibits or attachments referenced in filed documents, unless the Court permits filing in paper form. E-Filers shall submit as exhibits or attachments only those excerpts of the referenced documents that are directly germane to the matter under consideration by

² *See* User's Manual for further information.

the Court. Excerpted material must be clearly and prominently identified as such. The Court may require parties to file additional excerpts or complete documents when it deems it necessary.

4.7 Non-Scanned Exhibits

In the event that a party must file non-scanned exhibits physically with the Clerk's Office (i.e., video recordings, demonstratives, large documents, etc.), the party must file a "Notice of Manual Filing" in ECF prior to submission of the exhibits. The notice must contain the name and a description of the exhibits.³ A single notice may reference multiple non-scanned exhibits. The party must provide a copy of the notice when the exhibit or exhibits are filed with the Clerk's Office.

4.8 Agreed Orders

A joint motion **MUST** be filed in order to submit an agreed order. The agreed order must be filed as an attachment to the motion. The agreement of all parties must be reflected in accordance with Section 6 of these rules.

4.9 Proposed Orders

Orders not agreed to by all parties should NOT be included as an attachment to a motion or other request for relief. Proposed orders should be e-mailed as an attachment in Word format to the judges' chambers.⁴ The proposed order should include a reference to the document number of the motion and a certificate of service on all parties.

4.10 Large Records

Upon approval of the Court or the Clerk, large records may be filed on paper and not electronically.

4.11 Transcripts

Official court transcripts are available electronically as follows:

- A transcript provided to the Court by a court reporter will be available at the Clerk's Office, for inspection only, for a period of 90 days after it is filed.

³ See **Exhibit A**.

⁴ See User's Manual for chambers' e-mail addresses.

- During the 90-day period, a copy of the transcript may be obtained from the court reporter at the rate established by the Judicial Conference. The transcript will be remotely electronically available to any attorneys of record who have purchased a copy from the court reporter.
- After the 90-day period has ended, the transcript will be available for copying in the Clerk's Office and for download through PACER.

The parties are responsible to ensure that the transcript is redacted in conformity with *Federal Rule of Civil Procedure 5.2* and *Federal Rule of Criminal Procedure 49.1* even if the transcript is requested by a judge, another party, or a member of the public/media.

Unless otherwise ordered by the Court, the parties must review the following portions of the transcript:

- opening and closing statements made on the party's behalf;
- statements of the party;
- the testimony of any witnesses called by the party;
- any transcript of a sentencing proceeding; and
- any other portion of the transcript as ordered by the Court.

The Clerk of Court will notify the parties upon the filing of a transcript. Within seven (7) calendar days of the filing of the transcript, a party who has determined the transcript should be redacted pursuant to the federal rules must file a Notice of Intent to Redact and serve a copy of the Notice on the court reporter. If redaction is requested, within 21 days of the filing of the transcript, the party must file a Redaction Request (and serve of copy of the Redaction Request upon the court reporter), indicating where the personal identifiers appear in the transcript by page and line and how they are to be redacted.

If an attorney fails to timely file a Notice of Intent to Redact, or files a Notice of Intent to Redact but fails to timely file a Redaction Request or motion to extend time, no redactions will be made and the original transcript will be electronically available to the public through PACER after 90 days.

In order to request redactions other than those set forth in the federal rules, a party must file a separate motion to redact.

If a redacted transcript is filed with the Court, the redacted transcript will be made electronically available to the public through PACER after 90

calendar days from the date of filing of the original transcript and the original transcript will be sealed. If there is no redaction of the transcript, the original transcript will be made remotely electronically available through PACER after 90 calendar days from the date of the initial filing of the transcript.

The parties are further responsible for alerting the court reporter as soon as they become aware that a transcript discloses the identity of a child victim or child witness, as defined in 18 U.S.C. § 3509. Pursuant to 18 U.S.C. § 3509(d), all papers (including transcripts) to be filed in Court that disclose “the name of or any other information concerning” a child victim or a child witness in criminal cases shall be filed under seal. Such transcripts will not be made available on the public terminals and will not be made remotely accessible through CM/ECF or PACER unless and until all child victim and child witness information is redacted from the transcript. A case participant may purchase the unredacted transcript from the court reporter for the purpose of making redactions or may review the transcript for redactions *in camera* in the Clerk’s Office. Any redactions of child victim and child witness information must be requested in accordance with this Rule.

5. Registration and Passwords

Only a registered E-Filer may electronically file documents with the Electronic Filing System.

Attorneys practicing before the Court, including those admitted *pro hac vice* and those authorized to represent the United States, shall, absent good cause shown, register as E-Filers of the Electronic Filing System. Registration to E-File shall occur through PACER and requires each registrant's name, address, telephone number, e-mail address, and a confirmation that the attorney is admitted to practice before the Court. By registering to E-File, E-Filers certify that they have read the Electronic Case Filing Rules and Procedures and will abide by them.

A party to an action who is not represented by an attorney may, with the Court's permission, register as an E-Filer solely for purposes of that action. Registration shall be in a form prescribed by the Clerk and require identification of the action as well as the party's name, address, telephone number and e-mail address. If, during the course of the proceeding, the party retains an attorney who is a registered E-Filer, the attorney shall, upon entering an appearance, advise the Clerk to terminate the party's E-Filer registration.

Registration as an E-Filer constitutes consent to electronic service of all documents as provided herein, by the local rules of the Court and by any applicable rule of procedure.

Once registration is complete, the E-Filer will use his/her PACER login and password to access the Court's Electronic Filing System.

No E-Filer or other person may knowingly permit an E-Filer's login and password to be used by anyone other than an authorized agent of the E-Filer.

E-Filers agree to protect the security of their passwords. In the event that an E-Filer believes that the security of an existing password has been compromised and that a threat to the Electronic Filing System exists, the E-Filer shall immediately give notice by telephone to the ECF Help Desk and PACER. E-Filers may be sanctioned for failure to comply with this provision.

6. Signatures

An authorized filing made through an E-Filer's ECF account, together with the E-Filer's name on a signature block, shall serve as the E-Filer's signature for purposes of Fed. R. Civ. P. 11 and Fed. R. Crim. P. 49(b)(4) and for all other purposes under the Federal Rules and the Local Rules of this Court.

Electronically filed documents shall set forth the E-Filer's name, address, e-mail address, telephone number and Board of Professional Responsibility registration number. In addition, in the space where the attorney's signature would normally appear, the E-Filer's name shall be typed preceded by the symbol "s/" or a scanned image of the E-Filer's name shall be inserted.

A document containing the signature of a defendant in a criminal case may, at the option of the presiding judge, be filed: (1) in paper form with an original written signature; or (2) in electronic form as a scanned image of the document containing an image of the defendant's signature.

In order to file a document required to contain the signature of more than one person, the E-Filer shall: (1) file a scanned image of the document containing all necessary signatures; (2) file the document without the requisite signatures but with a representation by the E-Filer that all

signatories have consented to the filing of the document; or (3) file the document in any other manner approved by the Court.

Documents requiring an original signature other than that of the E-Filer (*e.g.*, affidavits and declarations) shall be filed by transmitting a scanned image of the document to the Electronic Filing System in PDF format.

A non-filing signatory or party who disputes the authenticity of an electronically filed document containing multiple signatures must file an objection to the document within ten days of the Notice of Electronic Filing.

7. Retention Requirements

An electronically filed document that requires an original signature other than that of the E-Filer (*e.g.*, affidavits and declarations) shall be maintained in paper form by counsel representing the party on whose behalf the document was filed for one year after all time periods for all appeals expire. On request of the Court, counsel must provide the original document for review.

8. Effect of Electronic Filing

Electronic transmission of a document to the Electronic Filing System, together with the transmission of a Notice of Electronic Filing from the Court, constitutes filing of the document for all purposes under the Federal Rules of Civil and Criminal Procedure and the local rules of this Court, and constitutes entry of the document on the docket kept by the Clerk under *Fed. R. Civ. P.* 58 and 79 and *Fed. R. Crim. P.* 49 and 55.

Each electronically filed document, as stored by the Court, becomes a part of the Court's official record and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form as required under Section 4 (which is deemed filed as of the date and time stamped on the paper filing), an electronically filed document is deemed filed as of the date and time stated in the Notice of Electronic Filing generated by the Electronic Filing System.

Filing a document electronically does not alter the filing deadline for that document. In order for a document to be considered timely filed on a deadline date the filing must be completed on the deadline date before midnight (local time) in the division where the case is pending.

9. Electronic Service of Filed Documents

The Notice of Electronic Filing generated through the Electronic Filing System shall, upon transmission by the Court, constitute service of the filed document upon E-Filers participating in a pending action. Parties who are not E-Filers must be served with a paper copy of any electronically filed document in accordance with the applicable federal rule of procedure.

A certificate of service is not required when service is made through filing with the Electronic Filing System. If service in another manner is required, a certificate of service stating how such service was accomplished must be included with the electronically filed document, or filed within a reasonable time after the document has been served.

Initial documents, such as a complaint and summons in a civil case, must be served in accordance with the applicable rule of procedure. *See Appendix B* for a sample certificate of service.

10. Notice of Court Orders and Judgments

Immediately upon the entry of an order or judgment in a case assigned to the Electronic Filing System, the Clerk shall electronically transmit to E-Filers participating in the case a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing by the Clerk to the participating E-Filers shall constitute notice as required by *Fed. R. Civ. P.* 77(d) and *Fed. R. Crim. P.* 49(d). The Clerk shall give notice in paper form in accordance with the applicable rule of procedure to a party who has not consented to electronic service.

11. Filing and Issuance of Court Documents

11.1 General

All orders, decrees, judgments, notices, and other court-issued documents shall be electronically filed in accordance with these procedures. Upon filing such documents will be deemed to have been entered on the Court's docket under *Fed. R. Civ. P.* 58 and 79 and *Fed. R. Crim. P.* 49 and 55. Any order or other court-issued document filed electronically without the handwritten signature of a judge or clerk has the same force and effect as if the judge or clerk had signed a paper copy of the document and it had been entered on the docket in paper form.

The user should utilize ECF to pay fees and issues summons. The Court may enter orders as entries on the Court's docket without filing a separate order in the Electronic Filing System. Such orders are official and binding upon the parties.

The Court may issue warrants or summonses electronically. However, they may only be served in accordance with *Fed. R. Civ. P. 4* and *Fed. R. Crim. P. 4(c)*.

An E-Filer submitting a document electronically that requires a judge's signature must promptly deliver the document in such form as the presiding judge requires.

11.2 Documents Which Require Leave of Court to File

With the exceptions of motions to seal (*see* Rule 12.2, *infra*), if the E-Filer wishes to file a document that requires leave of court (e.g., amended complaint), the proposed document shall be attached as an exhibit to the motion. If the motion is granted, the order will direct the E-Filer to electronically file the document with the Court.

11.2 Agreed and Proposed Orders

Agreed orders must be filed in ECF as an attachment to a joint motion.

Proposed orders should **NOT** be included as an attachment to a motion or other request for relief. Instead, proposed orders must be e-mailed to the presiding Judge's chambers, at the appropriate e-mail address.

Chambers' e-mail addresses are available on each judge's judicial preferences page on the Court's website at <https://www.tned.uscourts.gov/judicial-officers>.

11.3 Memoranda

Memoranda should be filed separately from the motion. Under the Motions and Related Filings header on the Civil filings page, click [**Filings in Support of Motions**] and select [**Memorandum in Support of Motion**].

12. Sealed Cases and Documents

12.1 Sealed Cases

Only court personnel will have access to documents in sealed cases, except for:

- Disciplinary matters,
- CJA fee review matters,
- Certain matters related to search instruments, and
- Any other matter as provided by statute, rule, order, or the Court's discretion.

In all other sealed matters, all documents shall be filed in paper form and notices of electronic filing will not be sent. Where a notice of electronic filing is not generated, service must be made in some other manner allowed under the *Federal Rules of Civil Procedure* or *Federal Rules of Criminal Procedure*.

12.2 Sealed Documents

A party wanting to file a document under seal must file a motion using the *Leave to File Document Under Seal* motion event. The document sought to be sealed is not to be filed as an attachment to the motion. The document shall be docketed separately from the motion using the *Proposed Sealed Document* event.⁵ This event will automatically seal the document.

If the motion is granted, the Clerk's Office will revise the docket text from "proposed sealed document" to "sealed document," except in the case of a sealed motion. If the proposed sealed document is a motion, and the motion to seal is granted, the Clerk's Office will retrieve and re-docket the sealed motion. If the motion is denied, the Clerk's Office will delete the document and modify the docket entry to note the document was deleted upon the denial of the motion to seal.

Motions to seal will not be sealed. Counsel is strongly encouraged to set forth in the motion the justification for sealing in such a way that the motion need not be sealed. If counsel deems it necessary for the justifications to be sealed, counsel shall note in the motion that a memorandum is being filed and request that the memorandum and the document be sealed. The memorandum is not to be filed as an attachment to the motion. The

⁵ This event is located under "Other Documents."

memorandum shall be docketed separately from the motion using the *SEALED Memo in Support of Leave to File Doc Under Seal* event.⁶ This event will automatically seal the memorandum.

If the Court orders the memorandum sealed, no further action will be needed. If the Court does not order the memorandum sealed, the Clerk's Office will delete the memorandum and modify the docket entry to note the memorandum was deleted upon the ruling on the motion.

Court personnel shall have access to sealed documents. In certain instances, attorneys of record may be given access to sealed documents (e.g., social security cases and certain matters related to search instruments). Unless otherwise directed by the Court, docket entries for sealed documents will appear on the publicly-viewable docket report, but the document will not be viewable to the public. A notice of electronic filing will be sent upon the filing of a sealed document. However, non-court users will not be able to access the document. Accordingly, service of proposed sealed documents and memoranda in support of motions to seal must be made in some other manner allowed under the *Federal Rules of Civil Procedure* or *Federal Rules of Criminal Procedure*.

NOTE: These procedures do not apply to motions and orders sealing criminal complaints, indictments and informations, which are governed by Local Rule 26.2 (c) and Sections 4.5.1 and 4.5.2 of these rules and procedures.

12.3 Ex Parte Motions

Ex parte motions must be filed with the Clerk's Office in paper form. Counsel must serve the motion on any parties entitled to service in some manner allowed under the *Federal Rules of Civil Procedure* or *Federal Rules of Criminal Procedure*.

13. Technical Failures

An E-Filer whose filing is made untimely as the result of a Technical Failure may seek appropriate relief from the Court.

⁶ This event is located under "Filings in Support of Motion."

14. Filing Errors

The Electronic Filing System will not allow an E-Filer to correct a filing after it has been electronically submitted. E-Filers shall report Filing Errors to the Clerk's Office. If appropriate, the Clerk will make an entry in the Electronic Filing System indicating the document was filed in error. E-Filers may be required to re-file the document or file a motion requesting relief.

15. Public Access

Members of the public may review docket sheets and unsealed documents contained in the Electronic Filing System at the Clerk's Office or through the Court's Internet site, www.tned.uscourts.gov, after opening a PACER account.

16. Hyperlinks

Electronically filed documents may contain the following types of hyperlinks: hyperlinks to other portions of the same document; hyperlinks to other documents filed in CM/ECF; and hyperlinks to a location on the Internet that contains a source document for a citation.

Hyperlinks to cited authority may not replace standard citation format. Complete citations must be included in the text of the filed document. *See* E.D.TN. LR 7.4. Neither a hyperlink, nor any site to which it refers, shall be considered part of the record. Hyperlinks are simply convenient mechanisms for accessing material cited in a filed document.

The Court accepts no responsibility for, and does not endorse, any product, organization, or content at any hyperlinked site, or at any site to which that site may be linked. The Court accepts no responsibility for the availability or functionality of any hyperlink.

Sources: Standing Order (*In re: Electronic Case Filing Rules and Procedures*, April 4, 2004); Standing Order (*In re: First Revision to Electronic Case Filing Rules and Procedures*, June 22, 2005); Standing Order (*In re: Second Revision to Electronic Case Filing Rules and Procedures*, September 9, 2005); Standing Order (*In re: Third Revision to Electronic Case Filing Rules and Procedures*, March 10, 2006); Standing Order (*In re: Fourth*

Revision to Electronic Case Filing Rules and Procedures, October 26, 2007); Standing Order (*In re: Fifth Revision to Electronic Case Filing Rules and Procedures*, April 25, 2008); *In re: Sixth Revision to Electronic Case Filing Rules and Procedures*, August 22, 2008; *In re: Seventh Revision to Electronic Case Filing Rules and Procedures*, September 8, 2009; *In re: Amendments to Local Rules 1.1, 15.1, and 83.4; and ECF Rules 2.6, 4.1.1 and 4.1.2* (LR-11-01, June 6, 2011); Standing Order *In re: Ninth Revision to Electronic Case Filing Rules and Procedures*, October 14, 2011; *In re: Amendment to Local Rule* (LR-12-04, October 19, 2012); *In re Amendment to Local Rule* (LR-13-03, February 2, 2013); *In re Amendment to ECF Rules* (LR-13-04, August 16, 2013); *In re Amendment of Electronic Rules and Procedures* (LR-16-01, May 13, 2016), *In re Amendment of Local Rules* (LR-16-05, October 28, 2016); *In re Amendment of ECF Rule 6* (LR-19-03), *In re Amendment of ECF Rule 9* (LR-19-04), *In re Amendment of ECF Rule 10* (LR-19-05); *In re Amendment of ECF Rules* (LR-20-03); and *In re Amendment of ECF Rule 12.2* (LR-23-02); *In re Amendment of ECF Rules* (LR-23-02); and *In re Amendment of ECF Rules* (LR-25-02).

APPENDIX A

Notice of Manual Filing

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

at _____

)	
Plaintiff,)	
)	
v.)	[Case Number]
)	[Judge]
Defendant.)	

NOTICE OF MANUAL FILING

Please take notice that [Plaintiff/Defendant, Name of Party] has manually filed the following document/thing:

[Title of Document/Thing]

This document/thing has not been filed electronically because [insert reason, *e.g.*, it cannot be converted to an electronic document; the Court's ECF Rules and Procedures provide such documents are to be filed manually; the Court has ordered that the document/thing be filed manually; etc.]

Respectfully submitted,

s/ [Name of Attorney] Name of Attorney
TN BPR #
Address
Phone number

APPENDIX B

Sample Certificate of Service

Certificate of Service

I hereby certify that on [date], a copy of the foregoing [name of document] was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

s/ [Name of Attorney] Name of Attorney
TN BPR #
Address
Phone number