

**UNITED STATES DISTRICT COURT FOR  
THE  
WESTERN DISTRICT OF TENNESSEE**

**LOCAL RULES**

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**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE**

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## CIVIL

### **LR 1.1 SCOPE OF THE RULES**

- (a) Title and Citation. These rules shall be known as the Local Rules of the United States District Court for the Western District of Tennessee. They shall be cited as LR \_\_\_\_\_ for civil rules and LCrR\_\_\_\_\_ for criminal rules.
- (b) Effective Date: Transitional Provision. These rules become effective on March 1, 2011, and shall govern all actions and proceedings pending on or commenced after they take effect, except to the extent, in the opinion of the Judge to whom the case is assigned, their application in an action or proceeding pending on that date would not be feasible or would work an injustice.
- (c) Scope of Rules: Construction. These rules supersede all previous rules promulgated by this Court or any Judge of this Court.
- (d) Reference to Clerk. The term “Clerk” as used herein refers to the Clerk of the Court, unless specifically stated otherwise.
- (e) Deviation from Local Rules. By order entered in any case, the Court may deviate from any provision of any Local Rules of this Court, when appropriate for the needs of the case and the administration of justice.

### **LR 3.1 CIVIL COVER SHEET**

Every complaint or other document initiating or removing a civil action or proceeding, except *pro se* cases, shall be accompanied by a completed civil cover sheet. The civil cover sheet shall be submitted as a Form JS-44 obtained from the Clerk or from the Court’s website, [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov).

In section VIII of the JS-44 form, a “related case” is one that: (1) relates to property involved in an earlier filed case (that is, the case assigned the lower case number), (2) arises out of the same transaction or occurrence and involves one or more of the same parties as an earlier filed case, or (3) involves the validity or infringement of a patent at issue in an earlier filed case. Cases may be related even if one case already has been dismissed or otherwise terminated or if they have parties other than the party or parties in the earlier filed case.

### **LR 3.2 ELECTRONIC CASE FILING PROCEDURES**

The procedures for electronic filings are set forth in the Electronic Case Filing Policies and Procedures Manual, which is at APPENDIX A to these Rules.

**LR 3.3**  
**COMMENCEMENT OF ACTIONS – DIVISION OF COURT**

- (a) Divisions of Western District (See 28 U.S.C. § 123).  
The Eastern Division of the Western District shall be comprised of the following counties: Benton, Carroll, Chester, Crockett, Decatur, Dyer, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Lake, McNairy, Madison, Obion, Perry and Weakley.
- The Western Division shall be comprised of the following counties: Fayette, Lauderdale, Shelby and Tipton.
- (b) Actions shall be commenced in the division of the District Court set forth in 28 U.S.C. § 123, as follows:
- (1) A civil action against a single defendant residing in the District may be brought in either the division where the defendant resides, or in the division in which the claim arose or the event complained of occurred.
  - (2) A civil action against multiple defendants may be brought in any division of the District in which one of the defendants resides, or in the division in which the claim arose or the event complained of occurred.
  - (3) If no defendant resides in the District, the action shall be filed in either the division in which any plaintiff resides, or the division in which the claim arose or the event complained of occurred.
  - (4) For purposes of this rule, a corporation shall be deemed to be a resident of the division in which it has its principal place of business in the District, if it has a place of business in the District.
  - (5) For purposes of this rule, the United States, federal agencies, the State of Tennessee, and agencies of the State are deemed non-residents of the District. State or federal officials joined solely in their official capacities are deemed residents of the division in which they perform their duties.
  - (6) Notwithstanding the above provisions, any action seeking to establish an interest in real property shall be filed in the division in which the real property is located.
- (c) The filing of an action in an improper division shall not constitute grounds for dismissal of the action. If an action is brought in an improper division, the Court shall transfer the action to a proper division upon motion of a party. The Court also may, in its discretion, transfer the action to another division for the convenience of the Court, parties, witnesses, or in the interest of justice.



- (d) All civil cases shall be tried in the division in which the case is filed unless the Court transfers the case to another division.
- (e) Western District – Dyersburg. Counsel for a party to a civil action pending in the Eastern Division who desire that the action be tried at Dyersburg must file, within 14 days after answers have been filed to all asserted claims, a request that the action be placed on the Dyersburg trial docket. The request must set out the reasons therefor and must contain a certificate that it has been served on all parties to the action. A response to the request must be filed not later than 14 days after the request is served, and it must state the reasons for objection to the request, if any, and must contain a certificate that it has been served on all parties. Requests and responses shall be separately filed and shall not be included in other pleadings. The Court will rule on such requests without argument. The Court on its own motion may place civil cases on the Dyersburg docket from either division.

#### LR 4.1

#### SUMMONS AND SERVICE OF PROCESS

- (a) Preparation of Summonses. A party filing a complaint or any other pleading that requires the issuance of a summons, except for *pro se* plaintiffs who are proceeding *in forma pauperis* and who are not prisoners, shall prepare and submit the summons to the Clerk. The Clerk shall issue the summons in accordance with the Federal Rules of Civil Procedure.
- (b) Issuance of Summonses in *Pro Se* Cases.
- (1) If a *pro se* plaintiff who is not a prisoner has paid the filing fee, the Clerk will provide the plaintiff with the appropriate number of blank summonses when the complaint is filed. In accordance with Fed. R. Civ. P. 4(b), when presented with the properly completed summonses, the Clerk will sign, seal, and issue the process to the plaintiff for service.
  - (2) If a *pro se* plaintiff who is not a prisoner is proceeding *in forma pauperis*, the Clerk will issue summonses only if directed to do so by the Court following screening pursuant to 28 U.S.C. § 1915(e)(2)(B). Process will be served by the U.S. Marshal in accordance with 28 U.S.C. § 1915(d) and Fed. R. Civ. P. 4(c)(3).
  - (3) In all *pro se* cases where the plaintiff is a prisoner, the Clerk will issue summonses only if directed to do so by the Court following screening pursuant to 28 U.S.C. § 1915A and, if applicable, 28 U.S.C. § 1915(e)(2)(B).
    - (A) If a *pro se* prisoner plaintiff has paid the filing fee in advance and the Court orders service of process, the Clerk may be directed to send the appropriate number of blank summonses to the plaintiff with instructions

to complete and return them to the Clerk for signature and seal. The issued summonses will then be sent to the plaintiff for service.

- (B) If a *pro se* prisoner plaintiff is proceeding *in forma pauperis* and the Court orders the Clerk to issue process, the process will be served by the U.S. Marshal in accordance with 28 U.S.C. § 1915(d) and Fed. R. Civ. P. 4(c)(3).
- (c) Time Limit for Service. Federal Rule of Civil Procedure 4(m) shall govern the time limit for service in all cases, except that in cases governed by sections (b)(2) and (b)(3) of this Rule, service must be effected within 60 days of the filing of the service order.
- (d) Waiver of Service.
- (1) Any plaintiff served with a waiver by a defendant pursuant to Fed. R. Civ. P. 4(d) shall file such waiver with the Court within 7 days of service.
- (2) The provision for waiver of service in Fed. R. Civ. P. 4(d) shall not apply in cases filed by *pro se* plaintiffs proceeding *in forma pauperis*. In all such cases, the U.S. Marshal shall serve the summons and complaint, but only upon the Court's direction to do so.
- (e) Proof of Service. Proof of service, in the form of the return of service, shall be filed within 7 days after service is effected.

### LR 5.1

#### ADOPTION OF ELECTRONIC CASE FILING (ECF)

- (a) Effective January 1, 2006, all papers in all cases active as of that date or commencing on or after that date, including all civil, criminal and miscellaneous cases, shall be filed electronically through the Court's Electronic Case Filing ("ECF") system. Exceptions to this mandatory electronic filing shall be only upon order of the Court pursuant to motion for good cause shown or shall be those exceptions provided under Court policy, which generally relate to grand jury matters, law enforcement activities, and investigatory proceedings.
- (b) Mandatory electronic filing also applies to case-initiating papers, such as civil complaints, criminal complaints, indictments, informations and other documents filed with the Court that creates a new case and new case number on the Court's docket. An appeal to the Court of Appeals is also considered to be a case-initiating paper. Reference is made, however, to the need to effectuate traditional Rule 4 service when initiating a new case despite such electronic filing (See, Local Rule 5.2 on "Service").
- (c) The Clerk of Court is hereby authorized and instructed to promulgate, periodically update and administer written policies and procedures for the effective

implementation and creation of the Court's Electronic Case Filing System, which shall be set forth in the Court's Electronic Case Filing Policies and Procedures Manual.

- (d) This Local Rule supersedes any and all inconsistent provisions in existing Local Rules, such as, for example only, the requirement of filing complaints, pleadings and other papers.

#### **LR 5.2**

##### **NON-ELECTRONIC FILING AND SERVICE FOR *PRO SE* PARTIES**

- (a) Filing. If a party is exempt from Electronic Case Filing (ECF) by virtue of the Court's ECF Manual (APPENDIX A) or by Order of the Court, the original of all pleadings and papers (including memoranda of law) to be filed, other than proposed orders, shall be filed with the Clerk. The original of a proposed order shall be delivered to the Clerk for transmission to the appropriate judge.

#### **LR 6.1**

##### **TIME**

- (a) Computation of Time. Fed. R. Civ. P. 6 shall apply in computing any period of time prescribed or allowed by these Local Rules.

#### **LR 7.1**

##### **GENERAL FORMAT OF PAPERS PRESENTED FOR FILING**

- (a) All pleadings, motions, and other papers presented for filing shall be on 8-1/2 by 11 inch white paper, typewritten, with one-inch margins on all sides, and shall contain the name, address, telephone number, email address, if any, and the Board of Professional Responsibility number (or similar number, if any, from the attorney's state of licensure) of the attorney filing the document. To the extent a *pro se* party does not have access to 8-1/2 by 11 paper and/or typewriting capabilities, such party is required to make every effort to comply with this rule as closely as possible. Any handwritten documents must be in a form that is legible to the Clerk, the Court, and opposing counsel.
- (b) Lines must be double-spaced, except that quotations may be indented and single-spaced and headings and footnotes may be single-spaced. Font size (for footnotes as well as the body of the document) shall be no smaller than 12 point type.
- (c) If demand for jury trial under Fed. R. Civ. P. 38(b) and (c) of the Federal Rules of

Civil Procedure is made in the complaint or answer, such demand shall be contained in the last paragraph thereof. The phrase “JURY DEMAND” shall appear immediately opposite the style of the case on the first page of the pleading and all subsequent filings.

- (d) Page limitations imposed by these Local Rules do not include captions, signature lines, and certificates of service and/or consultation.

## LR 7.2 MOTIONS

(a) Filing, Service and Response.

- (1) Motions. (See Section II(B) of the ECF Attorney User Manual (APPENDIX B)) The Clerk shall accept for filing only those motions in civil cases that are accompanied by a supporting memorandum of facts and law (so identified). Motions for Summary Judgment shall comply with LR 56.1.

(A) All motions, except motions pursuant to Fed. R. Civ. P. 12, 56, 59 and 60 shall be accompanied by a proposed order in a word processing format sent to ECF mailbox only for presiding judge (do not send to regular e-mail address).

(B) Consultation by Counsel. All motions, including discovery motions but not including motions pursuant to Fed. R. Civ. P. 12, 56, 59 and 60 shall be accompanied by a certificate of counsel or the parties proceeding *pro se* affirming that, after consultation between the parties to the controversy, they are unable to reach an accord as to all issues or that all other parties are in agreement with the action requested by the motion. Failure to attach an accompanying certificate of consultation may be deemed good grounds for denying the motion.

The certificate must contain the names of participating counsel and the date and manner of consultation. The burden shall be on counsel filing the motion to initiate the conference upon giving reasonable notice of the time, place and specific nature of the conference. If an opposing counsel or party refuses to cooperate in the conduct of a conference, counsel must file a certificate to that effect, setting out counsel’s efforts to comply with this rule.

- (2) Responses. The response to the motion and its supporting memorandum, unless the motion is pursuant to Fed. R. Civ. P. 12(b) and (c) or 56 (see LR 12.1(b) ) shall be filed within 14 days after service of the motion and shall be accompanied by a proposed order in a word processing format sent to the ECF

mailbox only for the judge (do not send to regular mail address). Failure to respond timely to any motion, other than one requesting dismissal of a claim or action, may be deemed good grounds for granting the motion.

- (b) Submission of Motion. Upon the filing of a motion and the timely filing of the response, and a reply, if allowed by the Court or these Rules, the motion shall be submitted to the Court for a ruling unless a hearing has been requested and granted.
- (c) Reply Memoranda. Except as provided by LR 12.1(c) and LR 56.1(c), reply memoranda may be filed only upon court order granting a motion for leave to reply. Such motion for leave must be filed within 7 days of service of the response.
- (d) Hearing on Motion. If counsel desires a hearing on the motion before the court, counsel shall request the hearing in the motion or response and shall explain why a hearing would be helpful or necessary. If the court determines that a hearing would be helpful or necessary, the Court will set the date and time of the hearing and the clerk will notify all counsel.
- (e) Length. Unless otherwise ordered by the Court, memoranda in support and in opposition to motions shall not exceed 20 pages in length, and reply memoranda, if permitted, shall not exceed 5 pages in length.
- (f) Motions Pending on Removal. When an action or proceeding is removed to this Court with pending motions on which memoranda have not been submitted, the moving party shall comply with these rules within 14 days after removal, and each party opposing the motion shall then comply with these rules.
- (g) Prisoners. All motions and orders to produce prisoners for testimony shall be filed with the Clerk at least 28 days prior to the date of the hearing or trial. Counsel for represented parties are responsible for filing a motion if they require prisoner attendance. In *pro se* cases, the Court will issue the writ compelling the attendance of prisoner parties. However, *pro se* parties shall be responsible for filing a motion to require the attendance of non-party prisoners. Relief from this rule may be obtained by an order of the Court.
- (h) Citation of Authority and Copies of Authority. Citations to authority shall be in a generally accepted citation form. Citations to any judicial or administrative decision not fully reported in either United States Reports, Supreme Court Reporter, a Federal Reporter, Federal Supplement, Federal Rules Decisions or a South Western Reporter shall include Westlaw or Lexis citations, if available. If the decision is not available on Lexis or Westlaw, a copy of the entire text of the decision shall accompany the memorandum. Citations to statutes, regulations, ordinances, or other legislative authority not reported in the United States Code or the Tennessee Code Annotated shall include Westlaw or Lexis citations, if available. If the statute, regulation, ordinance, or other legislative authority is not available on Lexis or Westlaw, a copy of the authority shall accompany the memorandum. If a party does not have access to

the Lexis or Westlaw materials cited by a filing party and makes a request of the filing party, the filing party must provide a copy of the case, statute, regulation, ordinance, or other legislative authority to the requesting party.

- (i) Citation to Internet Materials. If a party cites to other materials from an internet source or website, a copy of such materials shall be attached to the filing in PDF format to ensure that the materials cited are retained in their original form in the Court's filing system.

### LR 7.3

#### MOTION FOR REVISION OF INTERLOCUTORY ORDERS

- (a) Application to Non-Final Orders. Before the entry of a judgment adjudicating all of the claims and the rights and liabilities of all the parties in a case, any party may move, pursuant to Fed. R. Civ. P. 54(b), for the revision of any interlocutory order made by that Court on any ground set forth in subsection (b) of this rule. Motions to reconsider interlocutory orders are not otherwise permitted.
- (b) Form and Content of Motion to Revise. A motion for revision must specifically show: (1) a material difference in fact or law from that which was presented to the Court before entry of the interlocutory order for which revision is sought, and that in the exercise of reasonable diligence the party applying for revision did not know such fact or law at the time of the interlocutory order; or (2) the occurrence of new material facts or a change of law occurring after the time of such order; or (3) a manifest failure by the Court to consider material facts or dispositive legal arguments that were presented to the Court before such interlocutory order.
- (c) Prohibition Against Repetition of Argument. No motion for revision may repeat any oral or written argument made by the movant in support of or in opposition to the interlocutory order that the party seeks to have revised. Any party or counsel who violates this restriction shall be subject to appropriate sanctions, including, but not limited to, striking the filing.
- (d) The provisions of this rule do not apply to requests to dissolve or modify interlocutory injunctions pursuant to Fed. R. Civ. P. 65.

### LR 11.1

#### SIGNATURES

- (a) The Filing User's login and password shall serve as that Filing User's signature on all papers filed electronically with the Court. They serve as a signature for purposes of Fed. R. Civ. P. 11, all other civil and criminal rules, all local rules, and for any other purpose for which a signature is required in connection with proceedings before the Court.
- (b) Every paper filed electronically must include a signature block containing the Filing User's name, attorney bar number, firm name, street address, telephone number, and primary E-Mail address. In addition, the name of the Filing User under whose login

and password the paper is filed must be preceded by a “s/” typed in the space where the Filing User’s ink signature would otherwise appear.

SAMPLE:    s/Name of Filing User  
                  Attorney Bar Number  
                  Firm Name  
                  Street Address  
                  City/State/Zip Code  
                  Telephone No. (xxx)xxx-xxxx  
                  Primary E-Mail Address

- (c) A paper containing the signature of a *pro se* defendant in a criminal case shall be scanned and filed by the Filing User or court personnel.
- (d) A paper requiring the signature of more than one party shall be electronically filed in accordance with Section 10.4 of the ECF Policies and Procedures by:
  - (1) Submitting a scanned paper containing all of the necessary signatures; or
  - (2) Submitting a paper electronically signed by one of the parties (or counsel) but also representing the consent of the other parties in each of the appropriate signature lines in the same manner that third party consents are noted on paper filings; or
  - (3) Any other manner approved by the Court.

**LR 12.1**  
**MOTIONS TO DISMISS**

- (a) Moving Party. Memoranda in support of motions to dismiss filed pursuant to FRCP 12(b) and (c) shall not exceed 20 pages without prior Court approval.
- (b) Responses. Memoranda in opposition to motions to dismiss shall not exceed 20 pages without prior Court approval. A party opposing a motion to dismiss must file a response within 28 days after the motion is served.
- (c) Reply by Moving Party. Leave of Court is not required to file a reply to a response to a motion to dismiss. Replies must be filed within 14 days after the response is served. A reply by a moving party shall not exceed 10 pages without prior Court approval.

**LR 16.1****FED. R. CIV. P. 16 PRETRIAL AND SCHEDULING ORDERS AND  
CONFIDENTIALITY OF ALTERNATIVE DISPUTE RESOLUTION PROCEEDINGS**

- (a) Every party shall have in attendance at all pretrial conferences an attorney or other person possessing full authority to bind that party regarding all matters previously identified by the Court for discussion at the conference and all reasonably related matters.
- (b) Scheduling and Settlement Conferences in Civil Cases. All scheduling and settlement conferences may be conducted by the District Judge or Magistrate Judge to whom the case is assigned, or by another District Judge or Magistrate Judge who agrees to conduct the conference at the request of the Judge to whom the case is assigned.
- (c) Confidentiality of ADR Proceedings.
  - (1) In accordance with 28 U.S.C. § 652(d), any ADR process conducted in a case pending in the Court is confidential. By entering into such a process, the parties mutually covenant with one another to preserve confidentiality. The parties, their counsel, and the neutral are prohibited from disclosing to the presiding judge or to a third party any information regarding communications or expressive conduct made during settlement proceedings except as specified in this Rule. Evidence about such communications shall not be admissible in any subsequent proceeding except as permitted by the Federal Rules of Evidence.
  - (2) Communications deemed confidential by this Rule may be disclosed, if such disclosure is not otherwise prohibited by law, only in the following circumstances:
    - (A) All parties consent to the disclosure of the communication; or
    - (B) The judicial officer who would otherwise enter judgment in the case or, in the event of the unavailability of that judicial officer, the Chief District Judge, conducts an *in camera* hearing or comparable proceeding and determines that evidence of the content of the communication is not otherwise available and that there is a compelling need for the evidence which substantially outweighs the policy favoring confidentiality.
    - (C) The confidentiality of information disclosed during ADR proceedings does not prohibit or limit (i) the Court from collecting information relative to evaluation of the ADR process, (ii) a party from disclosing the final resolution and settlement reached unless the parties have agreed to the confidentiality of same, and (iii) a party from making such disclosures as required by law.



**LR 16.2**  
**DIFFERENTIATED CASE MANAGEMENT**

- (a) Statement of Purpose and Scope of Authority. The purpose of this rule is to establish a Differentiated Case Management (“DCM”) system, under which cases are screened for complexity and the need for judicial involvement, assigned to specific tracks based on that criteria, and managed to disposition according to predetermined milestones established for respective tracks. Cases falling under the Local Patent Rules of this Court are exempt from this Rule.
- (b) Tracks.
- (1) Administrative Track.
- (A) Assignment:
- (i) Cases are assigned to this track by the Clerk of Court based on the nature of suit and are those that usually are resolved on the pleadings or the record. Administrative Track cases include: Bankruptcy cases before the District Court pursuant to 28 U.S.C. §§ 157 or 158, except those cases withdrawn from Bankruptcy Court pursuant to 28 U.S.C. § 157(d); actions for judicial review of administrative decisions of government agencies or instrumentalities in which the review is conducted on the basis of the administrative record; prize proceedings or for foreclosure of mortgages or sales to satisfy liens of the United States; proceedings for admission to citizenship or to cancel or revoke citizenship; proceedings to compel arbitration or to confirm or set aside arbitration awards; Freedom of Information Act (FOIA) actions; civil actions by the Veterans Administration or other government agency for recovery of erroneously paid educational assistance; proceedings for the temporary enforcement of orders of the National Labor Relations Board; proceedings to compel the giving of testimony or production of documents in this District in connection with discovery or for the perpetuation of testimony for use in a matter pending or contemplated in a United States District Court of another District; and proceedings to compel the giving of testimony or production of documents under a subpoena or summons issued by an officer, agency or instrumentality of the United States not provided with authority to compel compliance.
- (ii) Other cases may be assigned to this track based on the nature of the case. Such determination may be made either by the parties at filing, or by the Court at a preliminary scheduled conference.

- (iii) A case in a nature of suite listed in (i) above, but which may have more complex issues or facts, may likewise be assigned to another track.
  - (B) Management. Administrative Track cases shall be managed according to the following deadlines, set forth in an “ADMINISTRATIVE TRACK SCHEDULING ORDER,” in the form set forth in Appendix E hereto, to be issued by the Court within 180 days of the filing of the complaint:
    - (i) Deadline to file the record, if any: 30 days after the appearance of the first defendant; and
    - (ii) Dispositive motion deadline: 90 days after entry of the scheduling order.
    - (iii) A preliminary scheduling conference is not required; however, any party may file a motion to hold a scheduling conference, to alter the assignment of the case to the Administrative Track, and/or to otherwise alter the deadlines set forth herein.
  - (C) Except as provided herein, Administrative Track cases are exempt from the requirements of Fed. R. Civ. P. 16(b) and 26(f).
- (2) Pro Se Prisoner Track.
- (A) Assignment. Cases are assigned to this track by the Clerk of Court based on nature of suit and are administered by the District’s Prisoner Pro Se Office. Natures of suit include General Habeas Corpus cases, Motions to Vacate Sentence, Mandamus Petitions, and Prisoner Civil Rights actions, which include civil rights complaints lodged or filed by prisoners challenging the conditions of their confinement pursuant to 42 U.S.C. § 1983, *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), or otherwise, and all other civil rights claims relating to the investigation and prosecution of criminal matters or to correctional agencies and institutions in connection with their decisions or acts arising out of their custodial functions.
  - (B) Management. Pro Se Prisoner Track cases shall be managed according to the following deadlines, set forth in a “PRO SE PRISONER TRACK SCHEDULING ORDER,” in the form set forth in Appendix F hereto, to be issued by the Court within 60 days from the filing of service or waiver of service of the complaint on any named defendant pursuant to LR 4.1:
    - (i) Discovery cutoff: 150 days after the filing of the service or waiver of service of the complaint on any named defendant pursuant to LR 4.1; and

- (ii) Dispositive motion deadline: 180 days after the filing of service or waiver of service of the complaint on any named defendant pursuant to LR 4.1.
  - (C) Except as provided herein, Pro Se Prisoner Track cases are exempt from the requirements of Fed. R. Civ. P. 16(b) and 26(f).
- (3) Expedited Track.
- (A) Assignment. Cases that do not meet the criteria of the Administrative or Pro Se Prisoner Tracks, but are determined to be less complex, to require minimal judicial involvement and/or to require less time for disposition, are assigned to this track by agreement of the parties or in the discretion of the Court.
  - (B) Management.
    - (i) A preliminary scheduling conference, pursuant to Fed. R. Civ. P. 16, shall be scheduled by the presiding Judge within 180 days of the filing of the complaint, or within 60 days after the filing of the return of service or waiver of service of the last defendant, whichever is earlier.
 

R. At least 21 days before the preliminary scheduling conference, the parties shall conduct a conference pursuant to Fed.Civ. P. 26(f), at the initiative of plaintiff’s counsel. If the parties agree at the Rule 26(f) conference that the case should be assigned to the Expedited Track, the parties shall prepare, at the initiative of plaintiff’s counsel, and submit to the Court a proposed “EXPEDITED TRACK SCHEDULING ORDER,” in the form set forth in Appendix G hereto, reflecting the deadlines set forth in subsection (iii) of this rule and certifying that the parties have conferred in compliance with Rule 26(f). The proposed scheduling order shall be sent in word processing format to the ECF mailbox only (not the regular e-mail address) for the presiding Judge at least 3 days before the preliminary scheduling conference. If the Court approves and adopts the parties’ Expedited Track assignment and proposed scheduling order, the Court will enter the scheduling order and cancel the preliminary scheduling conference. Any party may request, however, that the preliminary scheduling conference not be canceled, regardless of the parties’ submission of a joint proposed scheduling order.
    - (ii) Expedited Track cases shall be managed according to the following deadlines:
      - R. Initial disclosure deadline: 14 days after submission of the proposed scheduling order;

- S. Discovery cutoff: 180 days after service or waiver of service of the first defendant; and
  - T. Dispositive motion deadline: 30 days after the discovery cutoff.
- (iii) Discovery in Expedited Track cases is limited to not more than 20 interrogatories per opposing side (subparts not permitted); 20 requests for admission per opposing side; 20 requests for production per opposing side; and 5 depositions per opposing side.
- (iv) It is the expectation of the Court that a trial will be conducted in all Expedited Track cases within one year after the filing of the complaint and will require 1 to 3 days of trial.
- (4) Standard Track.
- (A) Assignment. Cases that do not meet the criteria of any other Track, or in which the parties cannot reach agreement as to the appropriate Track, are assigned to this track. The majority of civil cases will be assigned to the Standard Track.
  - (B) Management.
    - (i) A preliminary scheduling conference, pursuant to Fed. R. Civ. P. 16, shall be scheduled by the presiding Judge with the scheduling order to be issued within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared, unless the Judge finds good cause for delay.
    - (ii) At least 21 days before the preliminary scheduling conference, the parties shall conduct a conference pursuant to Fed. R. Civ. P. 26(f), at the initiative of plaintiff's counsel. If the parties agree at the Rule 26(f) conference that the case should be assigned to the Standard Track, the parties shall prepare, at the initiative of plaintiff's counsel, and submit to the Court a proposed "STANDARD TRACK SCHEDULING ORDER," in the form set forth in Appendix H hereto, reflecting the deadlines set forth in subsection (iv) of this rule and certifying that the parties have conferred in compliance with Rule 26(f). The proposed scheduling order shall be sent in word processing format to the ECF mailbox only (not the regular e-mail address) for the presiding Judge at least 3 days before the preliminary scheduling conference.

- (iii) The preliminary scheduling conference shall be conducted by the presiding Judge for all cases on the Standard Track, regardless of submission by the parties of a joint proposed scheduling order. The scheduling order shall be issued following such conference.
  - (iv) Standard Track cases shall be managed according to the following deadlines:
    - (a) Initial disclosure deadline: 14 days after the preliminary scheduling conference;
    - (b) Discovery cutoff: 300 days after service or waiver of service of the first defendant; and
    - (c) Dispositive motion deadline: 30 days after the discovery cutoff.
  - (v) If it is the expectation of the Court that a trial will be conducted in all Standard Track cases within two years after the filing of the complaint and will require 3 to 10 days of trial.
- (5) Complex Track.
- (A) Assignment. Complex cases are those that require extensive judicial involvement because of the number of parties, complexity of the issues, scope of discovery, and/or other comparable factors and shall be so designated by the presiding Judge and the parties.
  - (B) Management.
    - (i) A preliminary scheduling conference, pursuant to Fed. R. Civ. P. 16, shall be scheduled by the presiding Judge with the scheduling order to be issued within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared, unless the Judge finds good cause for delay.
    - (ii) At least 21 days before the preliminary scheduling conference, the parties shall conduct a conference pursuant to Fed. R. Civ. P. 26(f), at the initiative of plaintiff's counsel. If the parties agree at the Rule 26(f) conference that the case should be assigned to the Complex Track, the parties shall prepare, at the initiative of plaintiff's counsel, and submit to the Court a "COMPLEX TRACK SCHEDULING ORDER," in the form set forth in Appendix I hereto, certifying that the parties have conferred in compliance with Rule 26(f). The proposed scheduling order shall be sent in word processing format to the ECF mailbox only (not the regular e-mail address) for the presiding Judge at least 3 days before the preliminary scheduling conference.

- (iii) The preliminary scheduling conference shall be conducted before the presiding Judge for all Complex Track cases, and a scheduling order shall be issued following such conference.
  - (iv) The Court may, in its discretion or upon motion, set additional scheduling and/or status conferences from time to time as necessary to appropriately monitor the progress of the cases within this Complex Track.
  - (v) It is the expectation of the Court that a trial will be conducted in all Complex Track cases within three years after the filing of the complaint and will require 10 or more days of trial.
- (C) Multidistrict Litigation. An attorney filing a complaint, answer, or other pleading involving a case which may involve multidistrict litigation, *see* 28 U.S.C. § 1407, shall, with the filing of the pleading, file in writing with the Clerk of the Court and the presiding Judge a paper describing the nature of the case and listing the title(s) and number(s) of any other related case(s) filed in this or other jurisdictions.
- (c) The presiding judge may direct at any time that a case be redesignated from one Track to a different Track. The Court may, in its discretion, alter any of the requirements set forth herein. Motions requesting extensions of time for discovery must be made prior to expiration of the existing discovery period and will be granted only in exceptional cases where the circumstances on which the request is based did not exist or the attorney or attorneys could not have anticipated that such circumstances would arise at the time the scheduling order was entered.

### LR 16.3

#### PRETRIAL AND SCHEDULING CONFERENCES: ALTERNATIVE DISPUTE RESOLUTION

- (a) Initial Conference. At the initial scheduling conference held pursuant to Fed. R. Civ. P. 16(b), in civil cases in which all parties are represented by counsel, the possibility of settlement shall be discussed, and the Court will determine if a method of Alternative Dispute Resolution (“ADR”) should be utilized in the case. The attorneys shall be prepared to discuss the advisability of referring their cases to alternative dispute resolution. ADR, without limitation, may include mediation by a Court approved mediator pursuant to the Court’s Plan for Alternative Dispute Resolution, private mediation, judicial settlement conferences, an early neutral evaluation, a mini-trial, summary jury trial or the like.
- (b) Party Requests. At any time after the initial Rule 16 scheduling conference, any party may inform the Court that the case is ripe for ADR and request the Court to direct the case to mediation in accordance with the Court’s Plan for Alternative Dispute Resolution or some other form of ADR.

The parties may request a judicial settlement conference only after they have engaged in and certify to the Court that they have participated in good faith in at least one unsuccessful mediation under the Court's Plan for Alternative Dispute Resolution or private mediation.

- (c) Court Ordered Alternative Dispute Resolution. The Court may order the parties to undergo any form of ADR, including but not limited to mediation pursuant to the Court's Plan for Alternative Dispute Resolution, (at <http://www.tnwd.uscourts.gov/mediation-plan.php>, attached hereto as APPENDIX D.1).
- (d) Reporting Mediation Results. Within 7 days of the mediator's submission of the "Mediation Certification" referenced in §5.11(b) of the Court's Plan for Alternative Dispute Resolution, the parties shall, without disclosing the parties' respective positions at the ADR, file a notice that the ADR was successful or unsuccessful and whether some other form of ADR might assist in resolving the matter.
- (e) Relief from Alternative Dispute Resolution Requirement. By motion for good cause shown, a party may be relieved of the obligation to participate in ADR.

#### **LR 16.4 TRIAL MEMORANDA**

Parties in civil cases may file with the Clerk a trial memorandum of facts and law not less than 14 days before the case is set for trial. Without prior Court approval, the memorandum shall be limited to 25 pages in length. The Court may require trial memoranda and will, in such a case, notify counsel when the memoranda are due.

#### **LR 16.5 TRIAL CONTINUANCES**

Cases shall not be continued upon stipulation of parties. Continuances shall be requested at the earliest time that the necessity for the continuance appears to counsel. Requests for trial continuances in civil or criminal cases shall be by a written motion filed with the Court or, in emergencies only, an oral motion made in open court. Continuances may be granted only upon a showing of good cause. All motions for continuances must comply with LR 7.2.

#### **LR 23.1 DESIGNATION OF "CLASS ACTIONS"**

The complaint or other pleading seeking to assert a claim by or against a class shall bear next to its caption the legend "Complaint – Class Action."

**LR 26.1**  
**DISCOVERY IN CIVIL CASES**

- (a) Interrogatories; Requests for Admission; Requests for Production of Documents.
- (1) When answering or objecting to interrogatories, requests for admission or requests for production of documents, the replying or objecting party shall set forth immediately preceding the answer or objection, the discovery request with respect to which answer or objection is made.
  - (2) Parties may electronically file a “Notice of Service” setting forth the date on which the interrogatories, requests for admission or requests for production of documents or the responses thereto were served. Interrogatories, Requests for Production of Documents, and Requests for Admission shall not be filed, except as allowed by LR 26.1(a)(3) or LR 26.1(b).
  - (3) A motion for leave of Court to submit additional interrogatories beyond the number allowed by Fed. R. Civ. P. 33 shall include copies of such additional interrogatories to be submitted, along with a statement as to the necessity for such additional discovery, its relevance or likelihood to lead to admissible evidence, and the fact that it cannot be obtained from other sources, as well as the certification required by LR 7.2(a).
- (b) Discovery Motions.
- (1) Discovery motions are subject to the requirements of LR 7.2(a).
  - (2) Motions to compel discovery in accordance with Fed. R. Civ. P. 26 through 37 shall:
    - (A) quote verbatim or attach copies of each deposition question, interrogatory, request for admission, or request for production to which objection has been taken or incomplete response has been given; and,
    - (B) include the response and the grounds assigned for the objection (if not apparent from the objection), if any.
  - (3) Responses to motions to compel discovery shall state with particularity the basis for, and, when appropriate, include evidentiary support for each objection to the requested discovery or given response.
  - (4) Parties shall file only those portions of the deposition, interrogatory, request for documents, request for admission, or response that are at issue.
- (c) Subpoena in Aid of Discovery. Absent an order of the Court to the contrary, each party to the action in which a subpoena is served requiring the production of documents or an inspection shall have the right to review and copy documents produced pursuant to such a subpoena and to participate in the inspection.



- (d) Parties shall supplement disclosures and discovery responses as required by Fed. R. Civ. P. 26(e) no later than 30 days before the trial date.
- (e) E-Discovery.
- (1) Introduction. Counsel for parties should confer as to whether the parties will seek discovery of electronically stored information (“e-discovery”). The Court expects the parties to cooperatively agree on how to conduct e-discovery. Any agreement reached shall be submitted to the Court for approval. In the event that such agreement has not been reached and approved by the Court by the Fed. R. Civ. P. 16 scheduling conference, the following default standards shall apply until such time, if ever, the parties reach agreement and the Court approves the plan to conduct e-discovery.
- (2) Discovery Conference. Parties shall discuss the parameters of their anticipated e-discovery at the Fed. R. Civ. P. 26(f) conference, as well as at the Rule 16 scheduling conference with the Court, consistent with the procedures outlined below. Prior to the Rule 26(f) conference, the parties shall exchange the following information:
- (A) A list of the persons most likely to have relevant electronically stored information (“identified custodians”), including a brief description of each person’s title and responsibilities (see Para. 7).
- (B) A list of each relevant electronic information system that has been in place at all pertinent time periods including the physical location of the system, the type of system, whether the system is archival or active, and the person most knowledgeable about the system.
- (C) The parties should also include other pertinent information about their electronically stored information and whether that electronically stored information is not reasonably accessible. Electronically stored information not reasonably accessible may include information created or used by electronic media, software, or hardware that is no longer in use maintained in redundant electronic storage media, or for which retrieval involves substantial cost.
- (D) The name of the individual designated by a party as being most knowledgeable regarding that party’s electronic document retention policies (“the retention coordinator”), as well as a general description of the party’s electronic document retention policies for the systems identified above (see Para 7).
- (E) The name of the individual who shall serve as that party’s “e-discovery coordinator” (see Para. 3).

- (F) Any problems reasonably anticipated to arise in connection with e-discovery. To the extent that the state of the pleadings does not permit a meaningful discussion of the above by the Rule 26(f) conference, the parties shall either agree on a date that this information will be mutually exchanged or submit the issue for resolution by the Court at the Rule 16 scheduling conference.
- (3) E-discovery Coordinator. In order to promote communication and cooperation between the parties, each party to a case shall designate a single individual through whom all e-discovery requests and responses are coordinated (“the e-discovery coordinator”). Regardless of whether the e-discovery coordinator is an attorney (in-house or outside counsel), a third-party consultant, or an employee of the party, he or she must be:
- (A) Familiar with the party’s electronic information systems and capabilities in order to explain these systems and answer relevant questions;
  - (B) Knowledgeable about the technical aspects of e-discovery, including electronic document storage, organization, and format issues; and
  - (C) Prepared to participate in e-discovery dispute resolutions.

The e-discovery coordinators shall be responsible for organizing each party’s e-discovery efforts to insure consistency and thoroughness and generally, to facilitate the e-discovery process.

- (4) Timing of E-Discovery. Discovery of relevant electronically stored information shall proceed in an orderly fashion.
- (A) After receiving requests for document production, the parties shall search their documents, other than those identified as electronically stored information not reasonably accessible, and produce responsive electronically stored information in accordance with Rule 26(b)(2)(B).
  - (B) Electronic searches of documents identified as electronically stored information not reasonably accessible shall not be conducted until the initial electronic document search has been completed. Requests for information expected to be found in not reasonably accessible sources must be narrowly focused, with some basis in fact supporting the request.
  - (C) On-site inspections of electronic information system under Fed. R. Civ. P. 34(b) shall not be ordered absent good cause and demonstration of specific need.

- (5) Search methodology. If the responding party intends to use an electronic search to locate responsive electronically stored information, the parties shall notify all other parties and disclose proposed search terms and any restrictions as to scope and method. The parties shall confer in good faith in an attempt to reach an agreement as to the method of searching, and the words, terms, and phrases to be searched. The parties shall also attempt to reach an agreement as to the timing and conditions of any additional searches that may become necessary in the normal course of discovery.
- (6) Default format of electronically stored information. If during the course of the Rule 26(f) conference the parties cannot agree to the format for document production, electronically stored information shall be produced to the requesting party as image files (e.g., PDF or TIFF). If the image file is produced, the producing party must continue to preserve the integrity of the native file, i.e., the original formatting of the document, its metadata and, where applicable, its revision history. After initial production in image file format is complete, a party must demonstrate a particularized need for production of electronically stored information in its native format.
- (7) Retention. During the Rule 26(f) conference, the parties should work toward an agreed preservation Order that outlines the steps each party shall take to segregate and preserve the integrity of all relevant electronically stored information. In order to avoid later accusations of spoliation, a Fed. R. Civ. P. 30(b)(6) deposition of each party's retention coordinator may be appropriate. The retention coordinators shall:
  - (A) Take steps to ensure that relevant e-mail of identified custodians are not permanently deleted in the ordinary course of business and that relevant electronically stored information maintained by the individual custodians are not altered.
  - (B) Provide notice to the parties as to the criteria used for spam and/or virus filtering of e-mail and attachments. E-mails and attachments filtered out by such systems shall be deemed non-responsive so long as the criteria underlying the filtering are reasonable.
- (8) Privilege. Counsel shall attempt to reach an agreement on a proposed Order regarding waiver of privilege or protection in the event privileged, protected or otherwise confidential electronically stored information is inadvertently disclosed. *See Fed. R. Evid. 502.*
- (9) Costs. The shifting of discovery costs to the requesting party or the sharing of those costs between the requesting party and responding party should be considered when the electronically stored information is sought. If the parties are unable to reach an agreement, the Court, on motion of one of the parties, should consider the following factors, in descending order of importance, in determining whether any or all discovery costs should be borne by the

requesting party: (1) the extent to which the request is specifically tailored to discover relevant information; (2) the availability of such information from other sources; (3) the total cost of production compared to the amount in controversy; (4) the total cost of production compared to the resources available to each party; (5) the relative ability of each party to control costs and its incentive to do so; (6) the importance of the issues at stake in the litigation; and (7) the relative benefits of obtaining the information. *See also* Fed. R. Civ. P. 26(b)(2)(C).

### **LR 41.1 DISMISSAL OF ACTIONS**

In cases assigned to a Magistrate Judge as Presiding Judge, but where no consent to the Magistrate Judge's jurisdiction has been filed by the parties, any party wishing to file a stipulation of dismissal pursuant to Federal Rule of Civil Procedure 41 must expressly consent to the Magistrate Judge's jurisdiction in the stipulation of dismissal or file a consent to the Magistrate Judge's jurisdiction prior to the filing of the stipulation of dismissal.

### **LR 43.1 PROCEDURES AT HEARING AND TRIALS**

(a) Presence of Counsel.

- (1) Duty of Counsel. Unless excused by the Court, unrepresented parties or counsel with authority to bind parties shall be present and punctual at all portions and phases of hearings and trials, including in jury cases, the time during which the jury is considering its verdict. Counsel and unrepresented parties shall inform their witnesses of the need for punctuality.
- (2) Presumed Present. Unless the contrary affirmatively appears of record, it will be presumed that the parties and their counsel are present at all stages of the trial, or if absent, that their absence was voluntary and constituted a waiver of their presence.

(b) Conduct of Counsel.

- (1) During Court proceedings, all attorneys shall stand when speaking. All objections and comments thereon shall be addressed to the Court. Objections shall be made with specific reference to the Federal Rules of Evidence or other authority on which the objection is based without argument. Any request to have the reporter read back testimony should be addressed to the Court. There shall be no oral confrontation between opposing counsel.
- (2) Courtroom Attire. All attorneys appearing in this Court shall be appropriately attired – coat and tie for men, comparable attire for women – and shall not be groomed or attired in a manner calculated to distract attention from the proceedings, call attention to themselves, or show disrespect to the Court.

- (c) Presence of Parties. All parties shall be present at any trial unless prior approval of the absence of a party is obtained from the Court.
- (d) Examination of Witnesses.
- (1) Only one attorney representing each party in the litigation shall examine, cross-examine or object during the examination of an individual witness.
  - (2) No person shall, by facial expression or other physical gesture, exhibit any opinion concerning any testimony that is being given by a witness.
- (e) Exhibits.
- (1) When practical, all documentary exhibits shall be prepared in sufficient quantities so that a copy may be furnished to the witness, the Court, opposing counsel and the examining attorney. The admissibility of trial exhibits should be stipulated whenever possible.
  - (2) After the final determination of an action, counsel or parties shall have 30 days within which to withdraw exhibits and depositions. In the event the exhibits and depositions are not withdrawn, the Clerk shall, after notice to the parties, destroy or otherwise dispose of them.
- (f) Courtroom Technology. In the joint pretrial order the parties shall disclose the technology they intend to use in the Courtroom during the trial to present their case. This disclosure shall list:
- (1) equipment they intend to bring into the Courtroom to use; and,
  - (2) equipment supplied by the Court that the parties intend to use.
- Further, the parties shall also confirm the compatibility/viability of their planned use of technology with the Court's equipment.
- (g) Requests for Jury Instructions. All requests for jury instruction shall be filed in accordance with the deadlines established in the scheduling order or by the Court. The requests must contain citations of supporting authorities. Supplemental and additional instructions may be submitted to the Court prior to final argument by counsel.

**LR 45.1**  
**SUBPOENAS IN CIVIL ACTIONS**

The United States Marshals will not serve subpoenas for witnesses in civil cases unless so required by law or by order of the Court upon a showing of good cause.

**LR 47.1**  
**JURIES**

- (a) Size of Civil Case Juries. The Court will seat at least 8 jurors in civil cases together with such additional jurors as the Court deems appropriate based on the nature of the case.
- (b) Challenges. Challenges to jurors shall be made in a manner that will not reveal to the jury the identity of the party making the challenge.
- (c) Relations with a Jury. Before and during the trial, parties and attorneys shall avoid conversing or otherwise communicating with a juror on any subject, whether pertaining to the case or not. During argument to the jury, no juror shall be addressed individually.
- (d) Juror Information. In the discretion of the Court, the following shall be permitted:
  - (1) Juror Note Taking. Jurors shall be instructed that they may take notes during the trial and deliberations. The Court shall provide suitable materials for this purpose. Jurors shall have access to their notes during deliberations, but not during recesses. After the jury has rendered a verdict or been dismissed, the notes shall be collected by the Court personnel, who shall destroy them promptly. Juror notes shall not be regarded as evidence.
  - (2) Juror Notebooks. When the Court deems it helpful in a particular case, jurors may be provided with notebooks to use in collecting and organizing appropriate materials, including such items as jury instructions, written exhibits, and the juror's own notes. Counsel should be apprised of this procedure and invited to prepare exhibits and other materials in a way that facilitates their inclusion in the jurors' notebooks. At the end of the trial, the notebooks should be collected by Court personnel and their contents destroyed, unless the Court instructs to the contrary.
  - (3) Interim Commentary. During the course of the trial, the Court may permit parties to address the jury in order to assist jurors in understanding the evidence that has been presented or will be presented. The Court may place reasonable limits on such statements and shall permit all parties to respond to the remarks of any one party.
- (e) Post-Verdict Interrogation of Jurors. After a verdict, no attorney, party, or representative of either may interrogate a juror without prior approval of the Court. Approval of the Court shall be sought only by an application of counsel in open Court, or upon written motion, either of which must state the grounds for and the purpose of the interrogation. If a post-verdict interrogation is approved, the Court will determine the scope of the interrogation and any limitations upon the interrogation prior to the interrogation.

- (f) After Mistrial. In the event that a mistrial is ordered due to the jurors' inability to agree on a verdict, any attorney or the attorney's representative may interrogate a juror without prior approval of the court, unless the court determines that the interrogation should not take place or determines that appropriate limitations should be established.

### **LR 52.1**

#### **POST-TRIAL PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW – NON-JURY CASES**

Absent Court order to the contrary, each party may submit amended and supplemental proposed findings of fact and conclusions of law within 14 days after the conclusion of trial. For good cause, the time period may be lengthened or shortened.

### **LR 54.1**

#### **COSTS, ATTORNEYS' FEES AND PAYMENT OF JUDGMENT IN CIVIL CASES**

- (a) Costs. If parties can agree on costs, it is not necessary to file a cost bill with the clerk. If counsel cannot agree, a cost bill will be filed with the clerk within thirty days from the termination of the case. If a cost bill is filed, the clerk will assess costs after notice and hearing. No costs are to be paid through the clerk except those that are due the clerk.
- (b) Attorney's Fees. Consistent with the provision in FRCP 54(d)(2)(B) permitting variation in the time for filing a motion for attorney's fees, a motion for an award of attorney's fees and related non-taxable expenses may be filed within 14 days from the date the Court's judgment becomes final. In addition to the requirements of Fed. R. Civ. P. 54(d)(2), a motion for an award of attorney's fees shall be supported by a memorandum setting forth the authority of the Court to make such an award, why the movant should be considered the prevailing party, if such a consideration is required for the award, and any other factors that the Court should consider in making the award. The motion shall also be supported by:
- (1) an affidavit or declaration of counsel setting out in detail the number of hours spent on each aspect of the case, and the rate customarily charged by counsel for such work; and,
  - (2) an affidavit or declaration of another attorney in the community, who is not otherwise involved with the case, setting out the prevailing rate charged in the community for similar services. Within eleven days after service of the motion, the party against whom the award is requested shall respond with any objections thereto and an accompanying memorandum setting forth why the award is excessive, unwarranted, or unjust.

- (c) Payment and Satisfaction of Judgments. Except with the respect to garnishments, litigation in which the United States is a party, or in which there is recovery by a minor or incompetent, the Clerk shall not, unless authorized by order of the Court, accept payment of judgments. When a judgment for the payment of money has been satisfied, the prevailing party shall file with the Clerk a Notice of Satisfaction of Judgment.

### LR 56.1

#### MOTIONS FOR SUMMARY JUDGMENT

- (a) Moving Party. In order to assist the Court in ascertaining whether there are any material facts in dispute, any motion for summary judgment made pursuant to Fed. R. Civ. P. 56 shall be accompanied by a separate, concise statement of the material facts as to which the moving party contends there is no genuine issue for trial. Each fact shall be set forth in a separate, numbered paragraph. Each fact shall be supported by specific citation to the record. If the movant contends that the opponent of the motion cannot produce evidence to create a genuine issue of material fact, the proponent shall affix to the memorandum copies of the precise portions of the record relied upon as evidence of this assertion.

Memoranda in support of a motion for summary judgment shall not exceed 20 pages without prior Court approval. The separate statement of material facts shall not exceed 10 pages without prior Court approval.

- (b) Non-moving Party. Any party opposing the motion for summary judgment must respond to each fact set forth by the movant by either:
- (1) agreeing that the fact is undisputed;
  - (2) agreeing that the fact is undisputed for the purpose of ruling on the motion for summary judgment only; or
  - (3) demonstrating that the fact is disputed.

Each disputed fact must be supported by specific citation to the record. Such response shall be filed with any memorandum in response to the motion. The response must be made on the document provided by the movant or on another document in which the non-movant has reproduced the facts and citations verbatim as set forth by the movant. In either case, the non-movant must make a response to each fact set forth by the movant immediately below each fact set forth by the movant. In addition, the non-movant's response may contain a concise statement of any additional facts that the non-movant contends are material and as to which the non-movant contends there exists a genuine issue to be tried. Each such disputed fact shall be set forth in a separate, numbered paragraph with specific citations to the record supporting the contention that such fact is in dispute.

Memoranda in opposition to motions for summary judgment shall not exceed 20 pages without prior Court approval. A non-movant's statement of additional facts shall not exceed 5 pages without prior Court approval.



A party opposing a motion for summary judgment must file a response within 28 days after the motion is served or a responsive pleading is due, whichever is later.

- (c) Reply by Moving Party. Leave of Court is not required to file a reply to a response to a motion for summary judgment. Replies must be filed within 14 days after the response is served. Without prior Court approval, a reply by a moving party shall not exceed 7 pages. If the non-moving party has asserted additional facts, the moving party shall respond to these additional facts by filing a separate reply statement in the same manner and form as specified in section (b) above.
- (d) Failure to respond to a moving party's statement of material facts, or a non-moving party's statement of additional facts, within the time periods provided by these rules shall indicate that the asserted facts are not disputed for purposes of summary judgment.
- (e) Objections to Rule 56 Evidence. Objections to evidentiary materials offered in support of or in opposition to motions for summary judgment shall be included within a timely response or reply memorandum, shall be separately designated as a specific evidentiary objection, and shall identify the Rule of Evidence or other authority that establishes inadmissibility of the proffered evidence. If any objection to evidentiary materials is raised for the first time in the reply memorandum, the party opposing such objection(s), within 7 days of service of such reply memorandum, may file a sur-reply of not more than 4 pages that only responds to the evidentiary objection(s) raised in the reply memorandum.

### **LR 65.1 INJUNCTIONS**

An application for a temporary restraining order or application for a preliminary injunction made in compliance with FRCP 65 will be considered by the Court only upon compliance with the following:

- (1) The filing of a motion or complaint seeking such relief;
- (2) Compliance with the notice provisions of Fed. R. Civ. P. 65; and
- (3) Application to the judge to whom the case is assigned. Application may be made to another judge in the event the judge to whom the case is assigned is unavailable by asking the Clerk to arrange for hearing before another judge.
- (4) In the event an application for temporary restraining order is filed preceding a complaint and, accordingly, before a judge is assigned, the filing of the application will cause the random selection of a judge. If the first randomly assigned judge is unavailable, the random selection will continue until an available judge is drawn, with that judge continuing through the case as the assigned judge.

**LR 67.1**  
**INVESTMENT OF REGISTRY FUNDS**

(a) General Provisions.

- (1) No money shall be sent to the Court or its officers for deposit in the Court's registry without a court order signed by the presiding judge in the applicable case or proceeding.
- (2) Unless provided elsewhere in this Local Rule or Administrative Order No. 2017-20, all monies ordered to be paid to the Court or received by its officers in any case pending or adjudicated shall be deposited with the Treasurer of the United States in the name and to the credit of this Court pursuant to 28 U.S.C. §2041 through depositories designated by the Treasurer to accept such deposits on its behalf.
- (3) Funds will be disbursed from the Court's registry only upon entry of an order authorizing disbursement. The order directing disbursement must include: (1) the name and address of each person or other entity to receive funds; and (2) the sum of money to be paid to each person or other entity along with any interest accrued thereon, less the registry fees and taxes provided for herein or as otherwise authorized by the Judicial Conference of the United States.

(b) Investment of Treasury Funds in Interest-Bearing Accounts

- (1) When, by order of the Court, funds on deposit with the Court are to be placed in some form of interest-bearing account or invested in a court-approved, interest-bearing instrument in accordance with Rule 67 of the Federal Rules of Civil Procedure, the Court Registry Investment System ("CRIS"), administered by the Administrative Office of the United States Courts under 28 U.S.C. §2045, shall be the only investment mechanism authorized.
- (2) Interpleader funds deposited under 28 U.S.C. §1335 meet the definition of a Disputed Ownership Fund ("DOF"), a taxable entity that requires tax administration. Unless otherwise ordered by the Court, interpleader funds shall be deposited in the DOF established within the CRIS and administered by the Administrative Office of the United States Courts, which shall be responsible for meeting all DOF tax administration requirements. The office of the clerk has established specific CM/ECF events for filing motions and proposed orders authorizing the deposit or disbursement of DOF funds as defined under 28 U.S.C. §1335.

(c) Fees and Taxes for CRIS funds

- (1) The custodian for all CRIS funds is the Director of the Administrative Office of the United States Courts or his designee. The custodian is authorized and directed by the Court to deduct the CRIS fee of an annualized 10 basis points on Court assets on deposit for all CRIS funds, excluding funds held in the DOF, for management of investments in the CRIS. According to the Court's Miscellaneous Fee Schedule, the CRIS fee is assessed from interest earnings to the pool before a pro rata distribution of earnings is made to court cases.
- (2) The custodian is authorized and directed by the Court to deduct the DOF fee of an annualized 20 basis points on Court assets on deposit in the DOF for management of investments and tax administration. According to the Court's Miscellaneous Fee Schedule, the DOF fee is assessed from interest earnings to the pool before a pro rata

distribution of earnings is made to court cases. The custodian is further authorized and directed by the Court to withhold and pay federal taxes due on behalf of the DOF.

- (d) Miscellaneous
- (1) Additional information concerning CRIS and DOF registry deposits can be found in the Court's Administrative Order No. 2017-20.
  - (2) The effective date of this REVISED FINAL DRAFT of L.R. 67.1 is September 25, 2017.
  - (3) This revised Local Rule shall only be applied prospectively as of September 25, 2017.

**LR 72.1**  
**RULES GOVERNING DUTIES AND PROCEEDINGS BEFORE**  
**UNITED STATES MAGISTRATE JUDGES**

- (a) Duties under 28 U.S.C. § 636(a). The United States Magistrate Judges for this district are authorized to perform and shall, without specific orders of reference, discharge all duties set out in 28 U.S.C. § 636(a) as follows:
- (1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;
  - (2) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgments, affidavits, and depositions;
  - (3) the power to conduct trials under section 3401, title 18 United States Code, in conformity with and subject to the limitations of this section;
  - (4) the power to enter a sentence for a petty offense; and
  - (5) the power to enter a sentence for a Class A misdemeanor in a case in which the parties have consented.
- (b) Duties under 28 U.S.C. § 636(b). In addition to the powers and duties set forth in 28 U.S.C. § 636(a), the United States Magistrate Judges for this district are hereby authorized, pursuant to 28 U.S.C. § 636(b), to perform any and all additional duties, as may be assigned to them from time to time by any judge of this court, which are not inconsistent with the Constitution and law of the United States.

The assignment of duties to the United States Magistrate Judges by the judges of this district may be made by standing order entered jointly by the district judges in this district or by any individual judge, in any case or cases assigned to him, through written order of reference or oral directive made or given with respect to such case or cases.

The duties authorized to be performed by the United States Magistrate Judges, when assigned to them pursuant to subsection (b) of this rule, shall include, but are not limited to:

- (1) Issuance of search warrants upon a determination that probable cause exists, pursuant to Fed. R. Crim. P. 41, issuance of orders for a pen register, a trap and trace device, or other surveillance device pursuant to 18 U.S.C. §§ 3122 & 3123, issuance of administrative search warrants upon proper application meeting the requirements of applicable law, and acceptance of returns of search warrants.
- (2) Processing of complaints and issuing appropriate summonses or arrest warrants for the named defendants. (Fed. R. Crim. P. 4.)
- (3) Conducting initial appearance proceedings, bond and detention hearings, and issuing orders of release or detention for defendants. (Fed. R. Crim. P. 5 and 18 U.S.C. § 3146.)
- (4) Appointment of counsel for qualified persons pursuant to this district's Criminal Justice Act Plan and approval of attorneys' compensation and expense vouchers. (18 U.S.C. § 3006A; Fed. R. Crim. P. 44.)
- (5) Conducting full preliminary hearings. (Fed. R. Crim. P. 5.1 and 18 U.S.C. § 3060.)
- (6) Conducting removal hearings for defendants charged in other districts, including the issuance of warrants of removal. (Fed. R. Crim. P. 5.)
- (7) Issuance of writs of habeas corpus ad testificandum and habeas corpus ad prosequendum. (18 U.S.C. § 2241(c)(5).)
- (8) Release or detention of material witnesses and holding others to security of the peace and for good behavior. (18 U.S.C. § 3149 and 18 U.S.C. § 3043.)
- (9) Issuance of warrants and conducting extradition proceedings pursuant to 18 U.S.C. § 3184.
- (10) Conducting proceedings for the discharge of indigent prisoners or persons imprisoned for debt under process or execution issued by a federal court. (28 U.S.C. § 2007.)
- (11) Issuance of an attachment or other orders to enforce obedience to an Internal Revenue Service summons to produce records or give testimony. (26 U.S.C. § 7604(a) and (b)).
- (12) Conducting post-indictment arraignments, acceptance of not guilty pleas, acceptance of guilty pleas in petty offense cases, and, with the consent of the defendant, in Class A misdemeanor cases and in felony cases, and the ordering of a presentence investigation report concerning any defendant who signifies the desire to plead guilty. (Fed. R. Crim. P. 10, 11(a) and 32(i) and (j).)

- (13) Accepting returns of indictments by the grand juries, issuance of process thereon, setting conditions for release on indictments and informations, and, on motion of the United States, ordering dismissal of an indictment or any separate count thereof. (Fed. R. Crim. P. 6(f) and 48(a).)
- (14) Supervision and determination of all pretrial proceedings and motions made in criminal cases including, without limitation, motions and orders made pursuant to Fed. R. Crim. P. 12, 12.2(c), 15, 16, 17, 17.1 and 28, 18 U.S.C. § 4244, orders determining excludable time under 18 U.S.C. § 3161, and orders dismissing a complaint without prejudice for failure to return a timely indictment under 18 U.S.C. § 3162; except that a magistrate judge shall not grant a motion to dismiss or quash an indictment or information made by the defendant, or a motion to suppress evidence, but may make proposed findings of facts and recommendations to the district judges concerning them.
- (15) Conducting hearings and issuance of orders upon motions arising out of grand jury proceedings including orders entered pursuant to 18 U.S.C. § 6003, and orders involving enforcement or modification of subpoenas, directing or regulating lineups, photographs, handwriting exemplars, fingerprinting, palm printing, voice identification, medical examinations, and the taking of blood, urine, fingernail, hair and bodily secretion samples (without appropriate medical safeguards).
- (16) Conducting preliminary and final hearings in all probation revocation proceedings, and the preparation of a report and recommendation to the district judge following an evidentiary hearing as to whether the petition should be granted or denied, and granting or denying the petition in misdemeanor cases in which the defendant has previously consented to the exercise of jurisdiction by a magistrate judge or in which the magistrate judge has jurisdiction. (Fed. R. Crim. P. 32.1 and 18 U.S.C. § 3653.)
- (17) Supervision, hearing and determination of all pretrial proceedings and non-dispositive motions made in civil cases including, without limitation, rulings upon all procedural and discovery motions, and conducting Rule 16(b) pretrial conferences; except that a magistrate judge (absent a stipulation entered into by all affected parties) shall not appoint a receiver, issue an injunctive order pursuant to Fed. R. Civ. P. 65, enter an order dismissing or permitting maintenance of a class action pursuant to Fed. R. Civ. P. 23, enter any order granting judgment on the pleadings or summary judgment in whole or in part pursuant to Fed. R. Civ. P. 12(c) or 56, enter an order of involuntary dismissal pursuant to Fed. R. Civ. P. 41(b) or (c), or enter any other final order or judgment that would be appealable if entered by a district judge of the court.
- (18) Conducting hearings, preparing and submitting proposed findings of fact and recommendations for disposition in any motion excepted in subparagraph (b)(17) of this rule.
- (19) Conducting all proceedings in civil suits, before or after judgment, incident to the issuance of writ of replevin, garnishment, attachment or execution

pursuant to governing state or federal law, and the conduct of all proceedings and the entry of all necessary orders in aid of execution pursuant to Fed. R. Civ. P. 69.

- (20) Conducting or presiding over the voir dire examination and empanelment of trial juries in civil and criminal cases and accepting jury verdicts in the absence of the presiding district judge with the consent of the parties.
- (21) Processing and review of all suits instituted under any law of the United States providing for judicial review of final decisions of administrative officers or agencies on the basis of the record of administrative proceedings, and the preparation of a report and recommendation to the district judges concerning the disposition of the case.
- (22) Serving as a master for the taking of testimony and evidence and the preparation of a report and recommendation for the assessment of damages in admiralty cases, non-jury proceedings under Fed. R. Civ. P. 55(b)(2), or in any other case in which a special reference is made pursuant to Fed. R. Civ. P. Rule 53.
- (23) In admiralty cases, entering orders (i) appointing substitute custodians of vessels or property seized in rem; (ii) fixing the amount of security, pursuant to Rule E(5) Supplemental Rules for Certain Admiralty and Maritime Claims, which must be posted by the claimant of a vessel or property seized in rem; (iii) in limitation of liability proceedings, for monition and restraining order including approval of the ad interim stipulation filed with the complaint, establishment of the means of notice to potential claimants and a deadline for the filing of claims; and (iv) to restrain further proceedings against the plaintiff in limitation except by means of the filing of a claim in the limitation proceeding.
- (24) Appointing persons to serve process pursuant to Fed. R. Civ. P. 4(c), except that, as to in rem process, such appointments shall be made only when the Marshal has no deputy immediately available to execute the same and the individual appointed has been approved by the Marshal for such purpose.
- (25) Processing and review of petitions in civil commitment proceedings under the Narcotic Addict Rehabilitation Act, and the preparation of a report and recommendation concerning the disposition of the petition.
- (26) Conducting proceedings and imposition of civil fines and penalties under the Federal Boat Safety Act. (46 U.S.C. §43).
- (27) Conducting settlement conference or other alternative dispute resolution proceedings pursuant to this district's ADR program, LR 16.1, and Fed. R. Civ. P. 16.
- (28) Granting admission or enrollment of attorneys to practice before the court in this district pursuant to LR 83.1.

- (29) Order competency examinations of defendants pursuant to 18 U.S.C. § 4244.
- (c) Duties under 28 U.S.C. § 636(c) Civil Consent Jurisdiction. Pursuant to 28 U.S.C. § 636(c)(1), and subject to the provisions of this rule, the United States Magistrate Judges for the district are hereby specially designated and shall have jurisdiction to conduct any or all proceedings in any jury or nonjury civil matter and order the entry of judgment in the case upon consent of the parties. The following procedures shall govern:
- (1) If a civil case, upon filing, is randomly assigned to a district judge as the presiding judge pursuant to Rule 83.8 governing assignment of civil cases, the clerk will provide the plaintiff and/or plaintiff's counsel a "Notice, Consent, and Order of Reference – Exercise of Jurisdiction by a United States Magistrate Judge" form ("Consent Form"). The clerk shall also issue or supply at that time, for each defendant in the case, copies of the Consent Form which shall be attached to the summons and thereafter served upon the defendant(s) in the manner provided by Fed. R. Civ. P. 4; provided, however, that a failure to serve a copy of such notice upon any defendant shall not affect the validity of the service of process or the jurisdiction of the court to proceed. If, after the initial filing of a civil case, new or additional parties enter or join in the action pursuant to the operation of any statute, rule or order of the court, the clerk shall immediately mail or otherwise deliver a "Consent Form" to each such party. In a case randomly assigned upon filing to a magistrate judge as the presiding trial judge, the provisions of Rule 83.8 shall govern.
  - (2) The Consent Form contemplated by subsection (c)(1) of this rule shall be in such form as the judges of the court from time to time direct. In addition, the clerk shall maintain on hand, in a form or forms to be approved by the judges of the court, written consent agreements for the use of the parties in communicating to the clerk their unanimous and voluntary consent, upon entry of an order of reference by the presiding district judge, to have all further proceedings in this case, including trial with or without a jury, and the entry of judgment, conducted by a United States Magistrate Judge.
  - (3) If the parties in any civil case unanimously consent to disposition of the case by a United States Magistrate Judge pursuant to 28 U.S.C. § 636(c) and this rule, such consent must be communicated to the clerk on an appropriate form (provided by the clerk in accordance with subsection (c)(2) of this rule). The clerk shall not accept or file any consent except in the form and manner, and within the time, prescribed by this rule.
  - (4) In the event the parties file a unanimous consent pursuant to subsection (c)(3) of this rule, the clerk shall immediately notify the presiding district judge who will promptly (1) enter an order of reference to a United States Magistrate Judge, or (2) enter an order declining to do so; provided, however, the district judges of the court shall not decline to make an order or orders of reference for the purpose of limiting the types of cases to be tried by the United States Magistrate Judges pursuant to this rule. In making or in declining to make an

order of reference the presiding district judge may consider, among other things, the current allocation of pending judicial business between the district judges of the court and the magistrate judges; the judicial economy, if any, to be gained by the reference as measured in part by the extent of prior judicial labor expended and familiarity accumulated in the case by the district judge or the magistrate judge, as the case might be; the extent to which the magistrate judge(s) may have time available to devote to the case giving due regard to the necessity of diligent performance of other judicial duties regularly assigned to the magistrate judges; and any other features peculiar to the individual case which suggest, in the interest of justice or judicial economy, that a reference should or should not be made.

- (5) In any case in which an order of reference has been made, the presiding district judge may, for cause shown on his own motion, or under extraordinary circumstances shown by any party, vacate the order of reference and restore the case to the calendar of the presiding district judge.
- (d) Misdemeanor Jurisdiction. Pursuant to 18 U.S.C. § 3401, the United States Magistrate Judges for this district, sitting with or without a jury, are specifically designated and shall have jurisdiction to try persons accused of, and sentence persons convicted of, petty offenses.

With consent of the parties, any of the United States Magistrate Judges for this district, sitting with or without a jury, shall have jurisdiction to try persons accused of, and sentence persons convicted of Class A misdemeanors committed within the district whether originating under an applicable federal statute or regulation or a state statute or regulation made applicable by 18 U.S.C. § 13. Cases of Class A misdemeanors may, upon transfer into this district under Rule 20, Fed. R. Crim. P., be referred to a United States Magistrate Judge for this district for plea and sentence, upon defendant's consent.

In a petty offense case involving a juvenile, the United States Magistrate Judges for this district may exercise all powers granted to the district court under Chapter 403 of Title 18 of the United States Code. In cases of any misdemeanor, other than a petty offense involving a juvenile, in which consent to trial before a magistrate judge has been filed, a magistrate judge may exercise all powers granted to the district court under Chapter 403 of Title 18 of the United States Code.

In the trial of all cases pursuant to this subparagraph, Rule 58, Federal Rules of Criminal Procedure, governs practice and procedure.

- (e) Duties under 28 U.S.C. § 636(e) Contempt Authority. Pursuant to 28 U.S.C. § 636(e), the United States Magistrate Judges for the district are hereby specially designated and shall have jurisdiction to conduct contempt proceedings and exercise the contempt authority as set forth in 28 U.S.C. § 636(e).
- (f) Duties as to Pretrial Matters in Civil Cases. Pursuant to authority granted under subsection (b)(17) of this rule, the United States Magistrate Judges for this district shall, upon order of reference, hear and determine all non-dispositive motions



including, without limitation, all procedural and discovery motions and shall conduct Rule 16(b) conferences, setting all deadlines and trial date, in coordination with the presiding trial judge's staff in all cases. Except in those cases which are excluded by Local Rule 16.1(b), the United States Magistrate Judges for the district shall conduct settlement conferences pursuant to the authority granted in subsection (b)(27) of this rule only after parties have engaged in private mediation. The parties must present a certificate from a private mediator that at least one mediation was held and the parties participated in good faith before the presiding trial judge will refer a case to the magistrate judge for a settlement conference.

(g) Appeals from or Objections to Magistrate Judges' Decisions.

- (1) An appeal from an order of a magistrate judge determining a pretrial matter shall be filed with the clerk and served on opposing counsel within fourteen days after being served with a copy of the order. Any other party may file a response within 14 days after being served with a copy of such appeal. The presiding district judge may reconsider any order determining a pretrial matter where it has been shown that the magistrate judges' order is clearly erroneous or contrary to law.
- (2) In any case in which the magistrate judge is not authorized to enter a determination pursuant to 28 U.S.C. § 636 or any standing or special order of the court entered thereunder, but is authorized or directed to submit proposed findings of facts and recommendations to the district judge to whom the case has been assigned, a copy of such proposed findings of facts and recommendations shall be furnished, upon filing, to the district judge and to all parties. Within 14 days after such service, any party may file and serve written objections thereto. Any other party may file a response within 14 days after being served with a copy of such objections. The district judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. The district judge may accept, reject, or modify in whole or in part, the findings and recommendation of the magistrate judge. The district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.
- (3) Upon the entry of judgment in any civil case disposed of by a magistrate judge on consent of the parties under 28 U.S.C. § 636(c), an aggrieved party may appeal directly to the United States Court of Appeals for the Sixth Circuit in the same manner as an appeal from any other judgment of this court.
- (4) The appeal of an order of contempt issued by a magistrate judge for this district shall be made to the United States Court of Appeals for the Sixth Circuit in cases proceeding on consent of the parties under 28 U.S.C. § 636(c). The appeal of any other order of contempt issued by a magistrate judge for this district shall be made to the district court.

(h) No limitation. Nothing in this rule shall be construed to limit or affect the right of any judge or judges of the court to assign judicial duties or responsibilities to a United States Magistrate Judge with or without the consent of the parties.

**LR 77.2**  
**CLERK OF COURT**

- (a) Legal Advice. The Clerk and the Clerk's employees desire to be of help to litigants and attorneys. However, interpreting the Rules of Procedure and giving legal advice are not permitted functions. Notice is hereby given to litigants and attorneys that the Clerk and the Clerk's employees assume no responsibility for information respecting applicable procedural rules, substantive law, or interpretation of these rules.
- (b) Advance Payment of Filing Fees.
- (1) Payment of Fees. The Clerk shall require advance payment of fees before any civil action, suite, or proceeding (other than those authorized to be brought *in forma pauperis*) is filed.
  - (2) When Fee Not Included. When a pleading is received for filing and is unaccompanied by either the required filing fee or an application to proceed *in forma pauperis*, or is accompanied by an application to proceed *in forma pauperis* that has not been acted upon by the Court, then the Clerk shall note "received" and the date received thereon and immediately notify counsel or the party who submitted the pleading that the pleading is held but not filed pending receipt of the required filing fee or an order granting an application to proceed *in forma pauperis*.

**LR 79.1**  
**REMOVAL OF COURT FILES**

- (a) Removal of original papers. Original papers in the custody of the clerk shall be removed from the clerk's office only upon order of the court, upon terms approved by the Clerk of Court, provided, however, that judicial officers and their staffs, official court reporters, special masters or commissioners may remove original papers as necessary to expedite the business of the court. Persons seeking to remove such papers shall do so only with approval of the Court.
- (b) Exhibits. All exhibits received or marked for identification at any hearing shall be delivered to the clerk, who shall keep them in his custody. However, any narcotics, cash, counterfeit notes, weapons, precious stones or other contraband received, and any other exhibits which because of size or nature require special handling shall remain in possession of the party introducing the exhibit during the pendency of the action.
- (c) After the final determination of any action, counsel shall have 30 days within which to withdraw exhibits in the clerk's custody. In the event the exhibits are not so withdrawn, the clerk shall destroy or otherwise dispose of said exhibits.

**LR 80.1****COURT REPORTERS AND TRANSCRIPTS**

- (a) Payment for Transcripts. Any party or attorney ordering a transcript of testimony, whether for appeal or otherwise, is personally obligated for the payment of the fee to the court reporter. However, the foregoing does not apply to those instances in which the fees are to be paid by the United States of America pursuant to legislative authority. Except in those cases in which the cost of a transcript is funded pursuant to the Criminal Justice Act, the court reporter may require prepayment for a transcript ordered by an attorney.
- (b) Clerk's Copy. The certified copy of the transcript delivered by the court reporter to the Clerk for the records of the Court, as required by 28 U.S.C. § 753, may not be removed from the office of the Clerk absent Court order.
- (c) Electronic Availability of Transcripts. The electronic availability of transcripts of proceedings shall be controlled by Admin. Orders 2008-35 and 2009-09.

**LR 83.1****BANKRUPTCY APPEALS**

- (a) Appeals. Bankruptcy appeals shall be handled in accordance with L.B.R. 8000 and L.B.R. 8006.
- (b) Oral Argument. Oral argument is not permitted absent a specific order of the Court.
- (c) Bankruptcy Appeals Panel. The Western District of Tennessee has adopted the use of the Bankruptcy Appeals Panel. Any rules of the Bankruptcy Appeals Panel shall supersede these rules for such appeals.

**LR 83.2****PHOTOGRAPHING, BROADCASTING, AND ELECTRONIC DEVICES**

- (a) **General Prohibition**
  - (1) The taking of photographs or the recording of transmission of Court proceedings<sup>1</sup>, whether in person or conducted virtually through an online platform, or the airing of radio, television or internet broadcasts by non-Court personnel from the floors of the Courthouse occupied by the Courts during the progress of or in connection with judicial proceedings or grand jury proceedings, including proceedings before a Magistrate Judge, whether or not Court is actually in session, are prohibited. In addition, the airing of radio, television, or internet broadcasts by non-Court personnel of any proceedings being conducted virtually through an online platform are also prohibited.
  - (2) An individual may not possess an electronic device beyond the security checkpoints of the Odell Horton Federal Building, except as described below. For purposes of this rule, an “electronic

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<sup>1</sup> Unless specified otherwise, Local Rule 83.2 applies to both the Odell Horton Federal Building in Memphis and the United States District Courthouse in Jackson.

device” means any portable electrically powered device capable of sending or receiving a wireless signal; storing, sending, or retrieving electronic data; or having computing capability.

- (3) Individuals who are allowed to possess an electronic device in the Odell Horton Federal Building, as described below, must place the device in the “silence” position at all times. Moreover, the device may only be used in courtrooms to assist in the performance of court-related business. Electronic devices may not be initiated, “answered” or examined or manipulated (for text messaging or otherwise) while in a courtroom unless such use is related to court business. Electronic devices may NOT be used to take photographs or audio or video recordings in a courtroom or in any other area of the Building in which Court business or proceedings are conducted, unless authorized by a judicial officer, used during designated ceremonies or used by a court employee for court-related business.

(b) Exceptions

- (1) In the Odell Horton Federal Building, the following people are excluded from the prohibition on possession of electronic devices: badged employees of the Odell Horton Federal Building (and visitors of such employees under the supervision of such employees), attorneys appearing in their official capacity as officers of the Court and staff of such attorneys, law enforcement officers, parties to litigation (other than in custody criminal defendants) who enter the Building accompanied by their attorney, if counsel certifies to security staff that such devices are necessary to facilitate litigation pending before the Court, parties to litigation who are representing themselves in the proceedings, if they have a court order that allows possession of electronic devices, and jurors and members of the media.
- (2) In the Odell Horton Federal Building, electronic devices may be used in the courtroom by an attorney, and the attorney’s paralegals and assistants under the supervision of the attorney, if necessary to the proceeding, including without limitation, for presentation of evidence during the course of trial, provided that the attorney ensures that such device is not used for voice communications, is operated silently, is not used in any manner that will disrupt any courtroom proceeding, and is not used to photograph, record, or broadcast any aspect of any proceeding. The presiding Judge retains authority and sole discretion to disallow use of electronic devices at any time.
- (3) Proceedings Other than Judicial Proceedings. Proceedings other than judicial proceedings, designed and conducted as ceremonies, such as administering oaths of office to appointed officials of the court, naturalization ceremonies, presentation of portraits and similar ceremonial occasions, may be photographed in, or broadcast or televised from, the courtroom with the permission of the Court.

(c) Enforcement

- (1) The United States Marshal and/or Courtroom Security Officers may take

necessary steps to enforce this rule including temporarily seizing the device, and immediately notifying a judicial officer of any such violation for appropriate action or sanction. No device shall be searched or reviewed by a United States Marshal and/or Courtroom Security Officer without consent of the user or obtaining a search warrant.

- (2) All badged employees of the Odell Horton Federal Building as well as each attorney of record in a case is responsible for notifying staff, clients, witnesses, and visitors of the requirements of this rule and for reasonably ensuring compliance with the rule.
- (3) Violations of this rule may result in the violator being required to remove the electronic device from the courthouse or confiscation of the device and the violator being reported to a judicial officer for appropriate action or other sanction.
- (d) **Judicial Discretion.** Any presiding judge may modify these procedures or suspend any person's privilege granted by this rule at any time for any reason.

#### **LR 83.4**

##### **ATTORNEYS – ADMISSION**

- (a) **Roll of Attorneys.** The bar of this Court shall consist of all present members and those attorneys admitted in the future to practice before this Court who have taken the oath prescribed by the rules and have paid to the Clerk such fees as the Court may prescribe from time to time. No person, unless duly admitted to practice in this Court shall be permitted to appear and participate in the trial of any action or hearing of any motion except in his or her own behalf or by special permission of the Court or as provided in section (d) of this rule.
- (b) **Eligibility.** Any person is eligible for membership who is admitted to practice law and in good standing before the Supreme Court of Tennessee, any other state, or the District of Columbia. If the applicant is not a member of the bar of Tennessee, he or she must also be a member in good standing of a United States District Court.
- (c) **Procedure for Admission.** Each applicant for admission to the bar of this Court shall file with the Clerk a written petition setting forth: (a) the attorney's Board of Professional Responsibility number (or similar number, if any, from the admittee's state of licensure) and current address and telephone number, along with; (b) a certificate of good standing from the highest court of his or her state or the District of Columbia and, if not a member of the bar of Tennessee, from a United States District Court. Admission then shall be obtained only on motion made by a member in good standing of the bar of this Court. The applicant, if admitted, shall take the prescribed oath, pay the required fees and certify that he or she subjects himself or herself to the jurisdiction of the Court and has obtained, is familiar with and agrees to be bound by these Local Rules, Tennessee Supreme Court Rule 8 (Rules of Professional Conduct), and the Guidelines of Professional Courtesy and Conduct (at APPENDIX C). Upon completion of all requirements for admission, the Court shall enter an order of admission. The admittee's name and Tennessee Board of Professional Responsibility number (or similar number, if any, from the admittee's state of licensure) shall be

inscribed on the roll of attorneys, and a certificate of admission may be issued upon application.

- (d) Permission to participate in a Particular Case. An attorney not licensed to practice law in the State of Tennessee, but who is licensed to practice and is in good standing at the bar of the highest court of any other state or the District of Columbia may be admitted specially for the purpose of acting as attorney in a case in this Court. Any attorney seeking special admission is subject to the following rules and requirements:
- (1) An attorney seeking to participate in a particular case under this section (d) shall file a written motion, including the attorney's license number, if any, from the attorney's state of licensure, and current residence and office addresses and office telephone number, along with:
    - (A) a certificate of good standing from the highest Court of a state or the District of Columbia, and from a United States District Court, and
    - (B) a certificate that the attorney subjects himself or herself to the jurisdiction of the Court and has obtained, is familiar with and agrees to be bound by these Local Rules, Tennessee Supreme Court Rule 8 (Rules of Professional Conduct), and the Guidelines of Professional Courtesy and Conduct (at APPENDIX C), and
    - (C) a proposed order of special admission.
  - (2) An attorney may be provisionally admitted for a particular case on oral motion without the required written motion and certificates in order to participate in initial preliminary matters, but such attorney must comply with the preceding subsection (d)(1) within 15 days of being provisionally admitted.
  - (3) Failure to comply with these rules, failure to keep the Clerk advised of a current address and telephone number, failure to attend scheduled conferences, hearings and other proceedings, or any misconduct shall be grounds for rescinding an order of special admission.
- (e) Appearance in Criminal Cases. An attorney retained by a defendant in a criminal case and assistant United States attorneys shall file a written notice of appearance, including the attorney's Board of Professional Responsibility number, stating that the attorney will serve as counsel of record. For defense counsel, notice must be filed within 4 days after being retained or within four days after process is served on the client, whichever occurs later. In the case of a pro hac vice appearance, defense counsel shall comply with the requirements of subsection (d)(1) above.

As assistant United States attorneys, notice must be filed within four days of the return of indictment, or initial appearance, or unsealing of indictment, whichever last occurs. The provisions of this rule apply to attorneys who appear as substitute counsel and to those who appear as counsel to an attorney already appearing as counsel of record.

- (f) Effect of Appearance as Counsel. By appearing in this Court or before a Magistrate Judge in a proceeding representing a client, an attorney represents to this Court, unless he or she affirmatively advises the Court to the contrary, that the attorney has complied with (c) or (e) above and is not currently under a disbarment or suspension from any other court. A party represented by counsel who has appeared in a case may not act on his or her own behalf unless that party's attorney has obtained leave of the Court to withdraw as counsel of record, provided that the Court may, in its discretion, hear a party in open Court, notwithstanding the fact that the party is currently represented by counsel of record.
- (g) Conduct and Discipline. All attorneys practicing before the United States District Court for the Western District of Tennessee shall comply with these Local Rules, the Rules of Professional Conduct as then currently promulgated and amended by the Supreme Court of Tennessee, and with the Guidelines for Professional Courtesy and Conduct as adopted by this court (APPENDIX C).
- (1) For a willful violation of the said Code or these Rules, an attorney is subject to appropriate disciplinary action by the Court in accordance with the procedures contained in this Court's Order Adopting Rules of Disciplinary Enforcement (filed 9/29/1980; copy available in clerk's office), as amended from time to time.
  - (2) If any attorney is convicted of or pleads nolo contendere to a felony or is disbarred from practice in any state or federal court, such attorney's right to practice in this Court shall be suspended immediately and may be restored only after application and hearing in accordance with the procedures contained in this Court's Order Adopting Rules of Disciplinary Enforcement (filed 9/29/1980; copy available in clerk's office), as amended from time to time.

### **LR 83.5**

#### **ATTORNEYS—WITHDRAWAL FROM REPRESENTATION**

No attorney of record may withdraw in any case except on written motion and Court order. All motions for leave to withdraw shall include the reasons requiring withdrawal and the name and address of any substitute counsel. If the name of substitute counsel is not known, the motion shall set forth the name, address and telephone number of the client, as well as the signature of the client approving the withdrawal on the client. Ordinarily, withdrawal will not be allowed if withdrawal will delay the trial of the action.

### **LR 83.6**

#### **CONTACTING JUDGES AND COURT PERSONNEL**

- (a) No Ex Parte Communication with Judges. Except as otherwise ordered, neither counsel nor a party to a pending action shall have contact with a judge about a matter pending before the Judge, unless there is an emergency and with reasonable notice to all counsel and unrepresented parties, orally or in open Court.
- (b) Law Clerks and Other Support Personnel. Except as may otherwise be directed by the court, neither counsel nor a party to a pending action shall discuss with law clerks or other support personnel the merits or other matters of substance relating to any

pending action.

**LR 83.7**  
**CIVIL PRO BONO PANEL FOR PRO SE INDIGENT PARTIES**

In order to encourage greater representation of *pro se* indigent parties in civil cases, the court has adopted the “Plan for the Appointment of Counsel for Pro Se Indigent Parties in Civil Cases of the United States District Court for the Western District of Tennessee,” (the Plan) pursuant to Administrative Order No. 98-17, filed May 28, 1998. This Plan is applicable district-wide, and is in effect to: increase the number of attorneys on the Civil Pro Bono Panel; govern the appointment of counsel from the Panel; allow for reimbursement of expenses from the *Pro Bono* Expense Fund; and, establish guidelines for such reimbursement. A copy of the Plan is available at the Clerk’s Office and on the Court’s website at: [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov).

**LR 83.8**  
**ASSIGNMENT OF CASES**

- (a) Initial Assignment of Cases. Unless otherwise ordered, cases in the Western District shall be assigned according to the following rules:
- (b) Assignment of Dismissed or Re-Filed Cases. In the event a case is dismissed and then re-filed at a later date, the judge(s) to whom the original case was assigned will be assigned the re-filed case.
- (c) Assignment of Related Civil Cases. Counsel shall inform the clerk of all related cases—as that term is defined in LR 3.1(b). If the later-filed case or cases have been assigned to a different judge or judges, the complaint in each later-filed case shall be examined to determine whether the later-filed case or cases are related to an earlier-filed case. If it is called to the clerk’s attention, via the required civil cover sheet (JS-44), upon the filing of an action that the later-filed case is related to an earlier-filed case, the clerk shall assign the later-filed case to the judge before whom the earlier-filed case was assigned without utilizing the random assignment system. The purpose of LR 3.1(b) and LR 83.8(c) on related cases is to reduce duplication of judicial efforts and to maximize efficiency in the prompt disposition of related cases.
  - (1) If the magistrate judge is the presiding judge in a pending earlier-filed case, all parties in the later-filed related case must also consent to the magistrate judge. In the event all parties in the later-filed related case fail or decline to consent, the presiding magistrate judge in the later-filed related case will be replaced by a randomly assigned district judge.
- (d) Exchange of Cases Between Judges. Unless otherwise ordered, case assignments may be exchanged as follows:
  - (1) When a judge has been assigned a case in accordance with these rules and is of the opinion that he or she should not preside in the case, such judge may, by mutual consent with one of the other judges of this district, transfer the case, unless the recusing judge determines to return the case to the Clerk for random reassignment. The judge to whom the case is transferred may select a comparable case assigned to him or her and transfer it to the judge from whom



the transferred case was received. If the parties have already consented to the magistrate judge as the presiding judge, then the transfer or reassignment will be to another magistrate judge.

- (2) If a matter demands immediate judicial determination (such as a temporary restraining order or a motion pertaining to bail) and the judge to whom the case is assigned is not reasonably available, then the party seeking the action shall contact the clerk, who will arrange for another judge to hear the matter. Handling of a matter under such circumstances does not constitute a permanent reassignment of the case.
- (3) For such other good cause and in such other manner as the court may direct.

### LR 83.13

#### SETTLEMENTS/RESOLUTIONS—NOTICE

- (a) Whenever a case is settled, resolved or otherwise disposed of out of Court, counsel for all parties shall immediately give notice by telephone call and/or email to the Court and Clerk and shall promptly file a notice of settlement.
- (b) Compliance with this Rule does not relieve the parties of the obligation to comply with Fed. R. Civ. P. 41(a)(1)(A). Upon filing the notice described in section (a), the parties shall promptly file either a notice of dismissal pursuant to Rule 41(a)(1)(A)(i) or a stipulation of dismissal pursuant to Rule 41(a)(1)(A)(ii). The parties shall also submit in MS Word format a proposed Agreed Order of Dismissal to the ECF mailbox only (not the regular e-mail address) of the Presiding Judge. If the parties fail to comply with this rule within 28 days of the filing of the notice, the Court may, in its discretion, enter an order dismissing the action.

**Comment:** The Standing Local Rules Committee calls attention to Tennessee’s savings statute, which governs a plaintiff’s right to recommence an action under certain circumstances following a “judgment or decree . . . rendered against the plaintiff.” Tenn. Code Ann. § 28-1-105; *see also* Tenn. R. Civ. P. 41.01(3) (“A voluntary nonsuit to dismiss an action without prejudice must be followed by an order of voluntary dismissal signed by the court and entered by the clerk. The date of entry of the order will govern the running of pertinent time periods.”). *But see, e.g., Ganley v. Mazda Motor of Am., Inc.*, 367 F. App’x 616, 623 n.2 (6th Cir. 2010) (discussing “the widespread agreement among the federal courts of appeals that orders issued after a plaintiff has voluntarily dismissed his complaint pursuant to Federal Rule of Civil Procedure 41(a) are void”).

- (c) Consequences of Late Notice in Civil Cases. Unless the Clerk’s office is notified that a case has been resolved by 1:00 p.m. on the last full business day prior to the date the trial is scheduled, all costs incurred in having jurors report for service in connection with the case may be assessed by the court equally between the parties, or against one of the parties if it appears that the party was responsible for failure to give the required notice to the Clerk. The Clerk or Deputy Clerk receiving such notice orally or in writing shall immediately record on the docket sheet the notice and the date and time of receipt and initial the entry.

## CRIMINAL

### **LCrR 12.1 MOTIONS IN CRIMINAL CASES**

- (a) All non-substantive motions, including discovery motions, shall include a certificate of counsel affirming that, after consultation between the parties to the controversy, they are unable to reach an accord as to all issues or that all other parties are in agreement with the action requested by the motion. Failure to attach such certification may be deemed good grounds for denying the motion. The certificate must contain the names of participating counsel and the date and manner of consultation. The burden will be on counsel filing the motion to initiate the conference. If opposing counsel or party refuses to cooperate in the conduct of a conference, counsel must file a certificate to that effect, setting out counsel's efforts to comply with this rule.
- (b) Motions to suppress, for change of venue, to sever, and to dismiss shall include memorandum of law and facts. The title of the motion must state that it is both a motion and a memorandum.
- (c) If a party opposes a motion, it shall file a response within 14 days after the motion is received, which shall contain a memorandum of law and facts. Failure to file a response will constitute a waiver of any objections which the party may have to a motion.
- (d) Memoranda in support of or in opposition to motions shall not exceed twenty pages without prior court approval.

### **LCrR 16.1 DISCOVERY PROCEDURES IN CRIMINAL CASES**

Discovery procedures in criminal cases, pursuant to Fed. R. Crim. P. 16, will be as follows:

- (a) Within 7 days after arraignment, any attorney seeking discovery shall make such a request in writing addressed to the United States Attorney and filed with the Clerk of Court. The request shall state specifically what items are being requested for discovery.
- (b) The United States Attorney shall respond in writing to the request for discovery within 14 days. The response shall include the following:
  - (1) Identification of the date the request for discovery was received by the United States Attorney and the name of the attorney making the request.
  - (2) Specification of items, or reasonably specific categories of items, that are available for discovery. Copies of discoverable documents shall be enclosed with the response unless the number of such documents creates an

unreasonable burden or expense, in which case the documents shall be made available for inspection and copying, at the defendant's expense, and the response shall indicate the time and place of the documents' availability. In addition, if discoverable items are not available in the United States Attorney's office, the United States Attorney shall notify any agents or witnesses who have control of the items of the necessity of making the items available for inspection and copying.

Note: If the defendant has been declared indigent by the district court, any costs associated with production of discovery shall be billed and paid for pursuant to CJA 21 or the procedures established by the Federal Defender's Office.

- (3) A statement of the extent to which the United States attorney seeks reciprocal discovery under Fed. R. Crim. P. 16(b).
- (c) Discovery Requests.
- (1) If the United States Attorney requests reciprocal discovery, and defense counsel has reciprocal discovery, then defense counsel shall respond in writing at least 14 days before trial. The response shall be filed with the Clerk of Court. The response shall conform to the procedure set forth in LCrR 16.1(b)(1)-(2). If defense counsel is unable to provide a response within this time period, defense counsel shall email, to the ECF mail box of the presiding judicial officer an *ex parte* statement of reasons why this is not possible.
  - (2) Disclosure of Expert Witnesses: In response to the government's reciprocal discovery requests, if the defendant intends to call an expert witness at a pretrial hearing, the defendant shall notify the United States Attorney in writing at least 14 days before the pretrial hearing of the existence of the expert witness and shall provide a copy of the expert witness's report or a summary of the expert witness's anticipated testimony.
 

If the defendant intends to call an expert witness at trial, the defendant shall notify the United States Attorney in writing at least 28 days before trial of the existence of the expert witness and shall provide a copy of the expert witness's report or a summary of the expert witness's anticipated testimony. Only the written notification shall be filed with the Clerk of the Court via the Court's ECF system, while a copy of the expert's identification information and a copy of the expert's report or summary of the expert's anticipated testimony shall be delivered in writing to the United States Attorney concurrent with the notice or upon receipt, whichever is later.
  - (3) If the defendant is unable to provide a response within the time limits set in LCrR 16.1(c)(2), defense counsel shall e-mail, to the ECF box of the presiding judicial officer, at least 14 days before the pretrial hearing and at

least 28 days before trial an *ex parte* statement of reasons why timely responses have not been possible.

### LCrR 17.1

#### SCHEDULING CONFERENCES IN CRIMINAL MATTERS

- (a) Every party shall have in attendance at all pretrial conferences an attorney or other person possessing full authority to bind that party regarding all matters previously identified by the court for discussion at the conference and all reasonably related matters.
- (b) All scheduling conferences will be conducted by the judge or magistrate judge to whom the case is assigned, or by another district judge or magistrate judge who agrees to conduct the conference at the request of the judge to whom the case is assigned not less than 45 days after arraignment, unless otherwise required by the local speedy trial act plan.
- (c) Responsibility of Parties Prior to Initial Scheduling Conference.
  - (1) Defense counsel will have requested and Government counsel will have provided a copy of discovery pursuant to Fed. R. Crim. P. 16.
  - (2) The parties will have conferred and will be able to advise the Court as to an anticipated disposition date.
- (d) Scheduling Order. The scheduling order entered by the Court shall include, along with other appropriate pretrial deadlines, a deadline for the filing of dispositive motions (including response and reply memoranda), a disposition date, and a trial date.
- (e) Continuances. Motions for continuances of a disposition or a trial date shall not be granted by the mere agreement of counsel. No continuance will be granted other than for good cause and upon such terms as the Court may impose.

### LCrR 32.1

#### PROCEDURAL STEPS FOR SENTENCING

The following procedures shall apply to all sentencings under the Sentencing Reform Act of 1984, as amended (28 U.S.C. § 991 *et seq.* and 18 U.S.C. § 3551 *et seq.*):

- (a) The district judge will schedule the hearing as soon as practicable but no earlier than 65 days or later than 90 days, following entry of a guilty plea, a plea of nolo contendere, or a verdict of guilty, unless good cause exists to schedule the sentencing at a different time.

- (b) The pre-sentence investigation report, including guideline computations, shall be completed by the probation officer and disclosed to the parties at least 35 days prior to the scheduled sentencing proceeding, unless the minimum period is waived by the defendant. The report shall be deemed to have been disclosed when a copy is physically delivered or three days after a copy is mailed.
- (c) If a party reasonably disputes sentencing factors or facts material to sentencing, or seeks the inclusion of additional factors or facts material to sentencing, in the pre-sentence investigation report, it is the obligation of the complaining party to communicate such objection or request in writing to the probation officer within 14 days after receiving the presentence report and to seek administrative resolution of such factor or facts through opposing counsel and the United States Probation Office. This pre-sentence conference is mandatory except when sentencing factors or facts are not in dispute. Informal resolution of disputed factors or facts material to sentencing should be resolved – to the extent practicable – through informal procedures, including telephone conferences.
- (d) Within 21 days after disclosure of the pre-sentence investigation report to the parties, counsel for the defendant and the government shall file a pleading entitled “Position of Parties with Respect to Sentencing Factors.” This pleading shall contain a written statement certifying that the party has conferred with opposing counsel and with the United States probation office in a good faith effort to resolve any disputed matters. The pleading shall also include notice of any factor important to the sentencing determination which is reasonably in dispute, in accordance with § 6A 1.1 of the United States Sentencing Commission Guidelines Manual (11/1/91 or subsequent versions). If the sentencing hearing is expected to last more than 30 minutes or if the party anticipates presenting evidence through more than 1 witness, the pleading shall notify the court of this.
- (e) At least 7 days prior to the scheduled sentencing proceeding, the probation officer shall transmit to the sentencing judge the pre-sentence investigation report, including guidelines computations, and an addendum indicating any unresolved factual disputes or objections by the parties with respect to the application of the guidelines, and the probation officer’s opinion concerning any disputed issues. Upon review of these materials, the sentencing judge will notify the parties if the court intends to consider a sentence outside the applicable guideline range on a ground not identified as a ground for variance either in the pre-sentence report or a pre-hearing submission. In this event, the sentencing judge will reset the sentencing hearing if necessary.
- (f) At the sentencing hearing, the sentencing judge shall hear arguments and, if necessary for a resolution of the disputed issues, hear evidence. The sentencing judge shall then announce tentative findings under § 6A 1.3(b) of the Guidelines Manual (11/1/91 or subsequent versions) and provide a reasonable opportunity for the submission of oral or written objections by either party prior to the imposition of sentence. For good cause shown the sentencing judge may continue the sentencing hearing for a reasonable time to allow any party an opportunity to present additional evidence or

oral or written objections to the court's tentative findings. After hearing from counsel, parties, and witnesses, if necessary, in the sentencing hearing and any continuation thereof, the judge shall impose sentence.

- (g) The times set forth in this rule may be modified by the court for good cause shown, except that the 21 day period set forth in paragraph (d) may be diminished only with the consent of the defendant.
- (h) Any party filing an appeal or cross-appeal in any criminal case in which it is expected that an issue will be asserted pursuant to 18 U.S.C. § 3742 concerning the sentence imposed by the court shall immediately notify the probation officer who shall then file with the clerk for inclusion in the record *in camera* (under seal) a copy of the pre-sentence investigation report.
- (i) The probation office will deliver to each lawyer or *pro se* party a copy of this rule on or before disclosure of the pre-sentence investigation report.

**LCrR 57.1**  
**PAYMENT OF FEES**

All fees due the Clerk shall be paid at the time of imposition except as otherwise provided by law.

# **APPENDIX A**

## **Electronic Case Filing (ECF ) Policies & Procedures**



# UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TENNESSEE

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## ELECTRONIC CASE FILING POLICIES AND PROCEDURES MANUAL

### INTRODUCTION

The District Judges of the United States District Court for Western District of Tennessee formally adopted the Electronic Case Filing (“ECF”) portion of the United States Courts’ CM/ECF electronic case management and filing system at a District Court meeting held on November 17, 2005. Mandatory electronic case filing thereby became effective for all court filings in all cases as of January 1, 2006. The scope of cases affected includes both civil and criminal cases active as of January 1, 2006 as well as those filed thereafter.

Implementation of electronic case filing has required the adoption of three Local Rules (L.R. Nos. 5.1, 5.2, and 11.1), an enabling Administrative Order (A.O. 2005-27) and an Administrative Order governing mandated redactions of personal information under the E-Government Act of 2002 (A.O. 2005-28), each of which became effective on January 1, 2006. These materials, along with others not mentioned, but bearing on the implementation of electronic filing, can be found at the District Court’s Web site located at: [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov).

Additionally, the Clerk of Court was instructed by the District Judges to prepare an “Electronic Case Filing Policies and Procedures Manual” (this document, also referred to as “the ECF Manual”) setting forth an administrative outline governing the operation of electronic case filing. Moreover, to further assist attorneys engaged in private practice as well as those working for government agencies, the Clerk of Court has held training classes on-site at the Federal Buildings in both Jackson and Memphis, Tennessee and off-site at various law firms requesting in-house training. On-site training in both Jackson and Memphis continues and will be available into the future to accommodate the needs of future attorneys and other users. An “Electronic Case Filing Attorney User Manual” (“ECF User Manual”), which provides detailed step-by-step instructions for using the ECF portion of CM/ECF has been published and distributed to all training classes and is also available on the District Court’s Web site. The Clerk of Court has designed a Power Point® presentation and a Web-based, on-line, real-time, hands-on training course available to all users of ECF, where attorneys can practice ECF processes within a training environment using real case data residing in a dummy-database.



The District Court and the Clerk of Court express their appreciation to members of their staff for so diligently pursuing the introduction of electronic filing in the Western District and accomplishing in only a few months a technology project that usually requires a year or more to implement. A number of other U.S. District Courts, including the U.S. District Court for South Carolina and the District Courts for both Middle Tennessee and Northern Mississippi, among others that we contacted and worked with, directly and indirectly contributed their accumulated knowledge and experience with electronic filing and thereby helped direct our activities. Finally, special appreciation goes to the Administrative Office of the U.S. Courts for providing to this District Court a number of highly qualified technical and operational experts who devoted themselves to this project on-site in Memphis and otherwise and thereby greatly accelerated our task.

Comments, questions, criticisms and suggestions regarding the District Court's policies and procedures as well as other aspects of this new electronic filing system should be directed to our Web site's ECF Coordinator, and materials can always be sent directly to the Clerk of Court: Thomas M. Gould, Clerk of Court, Federal Building, Suite 242, 167 North Main Street, Memphis, Tennessee 38103.

Thomas M. Gould, Clerk of Court  
United States District Court  
Western District of Tennessee

December 1, 2016

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## 1. Definitions

- 1.1 **ECF User Manual** means the Western District of Tennessee's ECF Attorney User Manual. All E-Filers are required to periodically check the court's Web site for updates to the ECF User Manual. See [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov).
- 1.2 **Electronic Case Filing (ECF) System** refers to the Western District of Tennessee's automated system for receiving and storing documents filed in electronic form. This program is part of the Case Management/Electronic Case Files (CM/ECF) software developed by the Administrative Office of the United States Courts.
- 1.3 **E-Filer** is an attorney who has a court-issued login and password allowing electronic filing of documents on the ECF System. Only attorneys admitted in this district or counsel in multi-district litigation transferred to this district may be E-Filers.
- 1.4 **Local Rules** means the Local Civil Rules and Local Criminal Rules for the Western District of Tennessee.
- 1.5 **Notice of Electronic Filing (NEF)** is a notice automatically generated by the ECF System at the time a docket entry, with or without a hyperlinked document, is created in the system. This notice sets forth the time of filing, text of the docket entry, and name of the party and/or attorney(s) required to receive the notice. If a PDF document is attached to the docket entry, the NEF will also identify the person filing the document, the type of document, and a hyperlink to the filed document. The hyperlink will allow recipients one opportunity to view and download the document without cost. See *infra* §§ 2.4 (Consent to Electronic Service), 5 (Notice of Court Orders, Judgments, and Hearings), and 11.2.1 (Service on E-Filer and *Pro Hac Vice* Participants).
- 1.6 **PACER (Public Access to Court Electronic Records)** is an automated system that allows an individual to view, print, and download court docket information over the internet. See *infra* § 3.4 (Web site address for PACER).
- 1.7 **PDF** refers to a Portable Document Format file. To be filed electronically, a document must be converted to a portable document format. Converted documents must contain the ".pdf" file extension.
- 1.8 ***Pro Hac Vice* Participant** is an attorney admitted *pro hac vice* and who is registered to receive Notice of Electronic Filings in the specific cases for which they are admitted.

- 1.9 Proposed Order** is a draft document submitted for a District Judge's or Magistrate Judge's signature. *See infra* 4.3 (Proposed Orders).
- 1.10 Technical Failure** is defined as a malfunction of court-owned or court-leased hardware, software, or telecommunications facilities which results in the inability of an E-Filer to submit a court filing electronically. **Technical Failure does not include malfunctioning of an E-Filer's equipment, hardware, or software.** *See infra* §§ 11.2.1(c) (Failed Transmission of NEF) and 12 (Transmission and Technical Failures).
- 1.11 Traditional Filing Method** means filing original documents bearing the electronic signature(s) of the attorney(s) (s/name) or the ink signature of a *pro se* party.
- 1.12 Traditional Service** means service of a paper copy of a document using the forms of service authorized under the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure.

## **2. Scope of Electronic Filing**

### **2.1 Cases Subject to Electronic Filing**

All civil, criminal, and miscellaneous cases shall be managed using the ECF System. E-Filers shall file all documents electronically on the ECF System, except as expressly provided herein or by order of court. The requirement to file all court documents electronically applies to all cases that have been opened prior to January 1, 2006 and to all cases that are filed after that date. The only exception will be cases in which E-Filers have obtained leave of court to file in a different manner.

### **2.2 Submission of Scanned Documents and Documents on Disk or CD-ROM**

In the event that an E-Filer files a court document by filing a scanned version of that document, which document must be presented to the court in PDF format, including documents filed as attachments to electronic documents filed through the ECF System as well as documents filed directly through computer equipment available in the Clerk's Office, the E-Filer certifies the legibility and reproducibility of that document. E-filers submitting documents on disk or CD-ROM shall ensure that the media utilized is virus-free. Submission of documents on disk or CD-ROM is not the preferred method of filing and will be utilized only with court approval.

## **2.3 Initiation of Actions**

The filing of initial papers shall be accomplished electronically under procedures outlined in the ECF User Manual and the Electronic New Civil Case Opening Handbook, available on the court's website ([www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov)).

## **2.4 Consent to Electronic Service**

Registration as an E-Filer or *Pro Hac Vice* Participant in the Western District of Tennessee constitutes consent to electronic service of all documents, except for service of a summons and complaint under Fed. R. Civ. P. 4. Registration as an E-Filer or *Pro Hac Vice* Participant also constitutes consent to the alternative methods of service provided in the event of a Failure of the Notice of Electronic Filing or in the event of a Technical Failure. A document filed electronically through the ECF System is deemed to have been served on all E-Filers and *Pro Hac Vice* Participants who ought to be served or noticed in the pertinent case upon transmission of the NEF indicating that the document was sent electronically. The effective date and time for such electronic filing and service shall be that which is electronically stamped on the NEF.

### **2.4.A. Consent to Electronic Service of Documents not Filed through ECF**

Attorneys practicing in this district who are also ECF registrants may, but are not required to, utilize electronic service of documents when sending case-related materials not otherwise filed through the Clerk's Office to opposing counsel. An example of material exchanged between attorneys but not directly filed through the ECF system would be discovery documents and data. If an attorney elects to use electronic service of such materials it must be effectuated by email attachment sent to opposing counsel's email address. Any attorney registered as a user of the ECF system is hereby mandated to accept such electronic service of case-related documents in lieu of the delivery of physical copies. Non-ECF attorneys, as well as, self-represented litigants, must be served physical copies of such case-related materials in the traditional manner.

## **2.5 Removed Cases**

In a case removed from state court to federal court, the E-Filer is required to file electronic copies of all documents previously filed in the state court together with the electronically filed Notice of Removal. Since many, if not all, of the documents previously filed in the state court action may not be available electronically, it is

permissible to file them in a scanned version so long as they are scanned to a PDF format.

## **2.6 Scope**

Nothing in this ECF Manual supersedes the Federal Rules of Civil Procedure (Fed. R. Civ. P.), the Federal Rules of Criminal Procedure (Fed. R. Crim. P.), this District's Local Rules, as modified for the implementation of ECF (*See* Local Rules 5.1, 5.2, and 11.1) or any order of this court.

E-Filers are urged to read the Policy and Procedures Manual in conjunction with the ECF Attorney User Manual and Electronic New Case Opening Manual, as the latter provides the step-by-step procedures for executing the procedures described in this Manual.

## **3. ECF Participation, Registration, and the Use of Passwords**

### **3.1 Participation**

Unless excused as set forth below, all attorneys who are members of and practicing in the Western District of Tennessee shall register as E-Filers. All attorneys appearing in Western District cases as *Pro Hac Vice* Participants must register as E-Filers concurrent with obtaining leave to appear *Pro Hac Vice* prior to filing any documents in this District.

#### **ADMISSION METHODS:**

Go to the court's website: [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov)

Choose Forms & Applications - Notice of Intent to File Attorney Admission OR Motion for Pro Hac Vice and follow instructions on the form. You will receive, via email, an ECF login and password.

1. Full Bar Admission - If you are filing for full admission, download the Application for Attorney Admissions without Personal Appearance, and e-file completed form into case YEAR-zz-9999 (e.g., in 2016 file in 16-zz-9999). You will be prompted to pay the admission fee through the Pay.gov system. If you choose the form Application for Admission to the Bar, complete the form, then contact the Office of the Clerk to arrange for an in person open court admission date. The current admission fee is \$231.00.



2. *Pro Hac Vice* Applicants - download Motion for Leave to Appear Pro Hac Vice, and e-file completed form into the appropriate case, along with a Certificate of Good Standing of the highest court in which admitted, and email a proposed order to the presiding judge's ECF mailbox. The proposed Order must be in word processing format and all other forms in a PDF format. The filing fee of \$150.00 will be paid during the filing process via Pay.gov. If the motion is denied, the applicant will either reapply or do whatever the court's order directs.

Please note that an attorney's failure to register as an E-Filer, unless otherwise excused from doing so, will preclude that attorney from receiving NEFs in any case. Further, even if an attorney is excused from ECF registration, that attorney, if appearing in a case, will be required to effectuate service of court papers in the traditional methods and will be barred from utilizing free and immediate electronic service through the Clerk's Office. Once that ECF registration is complete, an E-Filer may not withdraw from participation in the ECF System, except by order of the court.

### **3.2 Attorneys Excused from Participation**

Attorneys shall be excused from participation in the ECF System only upon order of court pursuant to motion demonstrating a showing of good cause as to why the attorney should not be required to participate. Among other relevant factors, such showing shall require attorneys to establish that ECF participation would impose a substantial and undue hardship. Requests to be excused shall be submitted to the Clerk of Court and shall be accompanied by affidavits establishing the basis of the claim of hardship, and the authority to grant such requests is vested in the Chief Judge of this District. As noted above, attorneys excused from participation shall file and be served using the traditional filing methods.

### **3.3 *Pro Se* Participation**

A party who is not represented by an attorney shall file papers in the traditional filing method either by personal delivery to the clerk's office or via mail. An attorney member of the Western District Court Bar who represents himself or herself *Pro Se* is NOT exempt from the electronic filing of documents, unless he or she has been otherwise excused by order of court from the electronic filing of documents due to substantial and undue hardship.

### **3.4 Registration**

To register as a E-Filer, an attorney must: (1) establish a PACER account (*Information on registering to use PACER can be found at <http://pacer.psc.uscourts.gov>*); (2) complete and submit the ECF Registration Form available on the District Court's Web site and return it via fax transmission or e-mail to the Clerk's Office (*Registration Forms may also be delivered by mail, addressed to: ECF Registration Coordinator, U.S. District Court, Federal Building, 167 N. Main Street, Suite 242, Memphis, TN 38103 OR ECF Registration Coordinator, U.S. District Court, 111 S. Highland Avenue, Room 262, Jackson, TN 38301*); and (3) have one or more valid, current Internet e-mail addresses to which NEFs can be sent. Please consult the ECF User Manual for more details.

It is the responsibility of all E-Filers (full bar and pro hac vice members) to notify the Clerk's Office about a change of name, address, phone, or facsimile phone in a timely manner. The notice must be in writing and may be submitted either by mail, facsimile, or e-mail to [intaketnwd@tnwd.uscourts.gov](mailto:intaketnwd@tnwd.uscourts.gov).

It is also the responsibility of all E-Filers (full bar and pro hac vice members) to keep their e-mail addresses current in the ECF System. To make updates, on the ECF blue menu line go to UTILITIES - Your Account. Under Your Account, choose the option needing update and follow screen commands.

### **3.5 Passwords**

Once the ECF Registration Form has been processed, the E-Filer will receive notification of the E-Filer's initial login and password. As further explained in the ECF User Manual, upon receipt of his or her initial password, an E-Filer should select a new password known only to that attorney. An E-Filer shall protect the security of the E-Filer's password since the ability to access an attorney's ECF account to effectuate an electronic filing is equivalent to providing that attorney's personal signature under Rule 11.

## **4. Court's Electronic Signature and Entry of Court Orders and Related Papers**

### **4.1 Filing and Entry of Orders**

All orders, decrees and judgments of the court will be electronically entered into the case docket by the court or court personnel, and shall constitute an entry on the docket for any and all rules and purposes under the Federal Rules of Civil and Criminal Procedure. These orders, decrees and judgments may include electronically signed documents separate from their related docket entry text, and the filing of such orders, decrees, and judgments shall generate an NEF at the time of docketing.

The court may also issue routine orders by a text-only docket entry for which an NEF will also be generated. In such routine orders, also referred to as “minute orders,” no separate *PDF* document will be issued, and the text-only entry shall constitute the court’s only order on the matter. Such text-only docket orders are official and binding even without the production of any sort of separate signed, written, or electronic document.

#### **4.2 Signing of Electronic Orders**

All court orders, including docket text-only minute-orders, decrees and judgments shall be filed electronically by the court or court personnel. Electronically-filed court orders and judgments shall have the same force and effect as if the judge had affixed a signature to a paper copy of the document and the document had been entered on the docket in the traditional manner. The judge's signature on an electronic order shall appear as “s/ followed by the judge's name” (e.g., “s/Judge James J. Jones”) typed on the signature line.

As further explained below (*Section 10 of this manual*), electronic signatures of non-judicial E-Filers shall utilize the same format (e.g., “s/Martin R. Smith”) in lieu of an ink-based signature.

#### **4.3 Proposed Orders**

There are special procedures for submitting proposed orders or other proposed documents, and they are more fully explained in the ECF User Manual. Generally, however, if an E-Filer files a motion that includes a proposed order or other proposed document, the motion itself must be filed through ECF and the proposed order or other document must be separately sent via e-mail to the presiding judge’s ECF mailbox.

The proposed order or other proposed document must be in a word processing format and NOT pdf. When proposed orders are submitted to the presiding judge’s ECF mailbox, it should be noted in the filing of the motion in ECF. Please add, *proposed order submitted* at the screen that reads **Docket Text: Modify as Appropriate**, and

e-mail a word-processing version of the proposed order to the appropriate judge assigned to the case. E-mail addresses are listed on our website, [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov).

**Note:**

The procedure for submitting proposed orders and documents to the presiding judge's mailbox pertains only to the proposed document and NOT to the various attachments that often accompany a motion. Documents associated with a motion should be electronically filed through ECF with the motion itself, as attachments to that motion. Do not send those attachments to the e-mail address being used for proposed orders. E-Filers are also strongly urged to adopt a precise naming convention to clearly delineate the nature of every attachment associated with a filed motion; that is, do not refer to those attachments merely as "Attachment 1," "Attachment 2," and the like because it will likely be more difficult for the court to find and evaluate those attachments. Refer to the User Manual, Adding Attachments.

**5. Notice of Court Orders, Judgments, and Hearings**

- 5.1** Immediately upon entering an order or judgment onto the docket in an action, the Clerk of Court shall electronically transmit a "Notice of Electronic Filing" ("NEF") to E-Filers and *Pro Hac Vice* Participants in the case. Electronic transmission of the NEF constitutes the notice required by the applicable provisions of the Federal Rules of Civil and Criminal Procedure. Electronic notices of hearings will also be sent by the Clerk of Court through ECF to E-Filers and *Pro Hac Vice* Participants.
- 5.2** The Clerk of Court must give notice of court orders, judgments, and court hearings in paper form to *pro se* parties and to attorneys who have been excused by order of court from ECF participation to the extent notice is required

**6. Consequences of Electronic Filing**

**6.1 Filing and Entry**

Electronic transmission of a document to the ECF System, together with the automated transmission of the Notice of Electronic Filing (NEF), in accordance with the Local Rules and Administrative Orders authorizing electronic case filing and the promulgation of these electronic filing policies and procedures (*this manual*) and the provisions of the ECF User Manual, constitutes filing of the document for all purposes under the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and this District Court's Local Rules, and effects entry of the document

onto the docket maintained by the Clerk of Court under applicable Federal Rules of Civil and Criminal Procedure.

## **6.2 Official Record**

When a document is filed electronically, the electronic copy of that document constitutes the official record in that case, and the electronically filed document is binding as the official record. Later modifications of a previously-filed document or docket entry are allowed only by the court or the Clerk's Office. An electronically submitted document is deemed filed on the date and at the time stated on the system-generated NEF.

## **6.3 Timeliness**

Timeliness of electronic filing is based on local time in the Western District of Tennessee (Central Standard Time). An electronic filing must be completed with a court-generated NEF before midnight in the Central Time zone to be considered timely filed on that calendar day. The time for a response after service by electronic means is governed by Fed. R. Civ. P. 6(d) and Fed. R. Crim. P. 45(c). Nothing in these policies and procedures should be construed to change or extend any deadlines set by statutes of limitations prescribed by law, Federal Rules of Procedure, Local Rules of this District Court, or orders of any judge in the District.

### **Note:**

The exact date and time of an electronic filing is the exact date and time stated on the system-issued NEF. Neither the time of commencement nor the time of completion of an electronic filing has any bearing on the timeliness of that filing. The date and time electronically affixed to the filing and as shown in the electronic NEF is solely determinative of timeliness.

## **7. Attachments and Exhibits**

### **7.1 Electronic Submission Required**

All documents referenced as exhibits or attachments to an electronically filed document shall be submitted in electronic form, as electronic attachments to the main document, subject to requirements and limitations described in the ECF User Manual under Adding Attachments (e.g., the limitation of 10 MB in file size for each attachment) or as otherwise ordered by the court on a case-by-case, event-by-event basis.

### **7.2 Excerpts**

An E-Filer shall submit as exhibits or attachments only those excerpts of referenced documents that are directly pertinent to the matter under consideration by the court together with the cover sheet or other excerpts necessary to identify the source of the information (e.g., deposition cover page). Excerpted materials must be clearly and prominently identified as such. E-Filers who file excerpts of documents as exhibits or attachments under this provision do so without prejudice to their right to file additional excerpts or the complete document. Responding parties or attorneys may file the complete document or additional excerpts that they believe are directly pertinent to the matter under consideration. The filing of transcripts and affidavits is set forth in Sections 7.5 and 7.6 below.

### **7.3 Filing of Original Depositions**

E-Filers shall not be required to file the original deposition from which excerpts were drawn absent a court order to the contrary. If, however, an entire transcription of a deposition is filed electronically, the E-Filer requesting same shall remain responsible to see that (1) the Court Reporter submitting that transcription has received instructions from the attorney regarding information that must be redacted and (2) the requested redaction has been completed in compliance with the E-Government Act of 2002.

### **7.4 Bookmarks and Hyperlinks**

Electronically-filed documents may contain bookmarks to locations within the same document. Hyperlinks to other documents or external sites are NOT permitted at this time due to the risk of broken links and the possibility of introducing a virus or malicious code from another website. It is anticipated that hyperlinks to external sites for retrieving case opinions and other legal research materials will become available in the near future.

## **7.5 Filing of Transcripts**

See Administrative Order 2008-35.

Transcripts must be submitted (but are not file-stamped) by Court Reporters electronically in PDF format. These transcripts will not be in redacted form. The transcript will not be accessible electronically via PACER for 90 days from the date of filing. The transcript will be available for inspection only, free of charge, at the office of the Clerk of Court via the public terminals. Copying of said transcripts will not be permitted during the 90 day period. During this period, a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference of the United States. Upon the Court Reporter filing the transcript, CM/ECF will generate and serve all parties associated with a particular case a Notice of Filing of the Office Transcript which will advise parties that they have seven (7) calendar days from the filing date of the transcript to file a Notice of Intent to Request Redaction of a Transcript and twenty-one (21) calendar days from the filing date of the transcript to file the actual Request for Redaction.

Parties wishing to redact a transcript must inform the Court, by filing a Notice with the Clerk via CM/ECF, of the party's intent to redact personal identifiers, as required by Federal Rules of Criminal Procedure 49.1 and Federal Rule of Civil Procedure 5.2, from the electronic transcript of the court proceeding. Within twenty-one (21) calendar days of the filing of the transcripts a Request for redaction shall be filed via the CM/ECF system and served on the Court Reporter. The request for redaction shall indicate by page and line number the location of the personal data identifiers for which redaction is being requested. Personal data identifiers include: individual's social security and taxpayer identification numbers, financial account numbers, names of minor children, dates of birth, and in criminal cases, home addresses. Requests for Redaction should be worded so that they do not include personal data identifiers since they will be viewable on the public docket of the case record. Parties seeking to redact personal identifiers other than those listed above shall file a motion in accordance with this court's local rules. A copy of the motion shall be served on the Court Reporter by the party seeking the redactions.

Redaction responsibilities are solely the responsibility of the attorneys or pro se litigants who attended the hearing to which the transcription applies. Each party is responsible for reviewing and requesting redaction of testimony of witnesses that were called for the party and for that party's own statements. The Court has not responsibility and is not staffed to verify that redactions are complete, so the E- Filer should submit specific instructions to the Court Reporter preparing such transcripts in order to ensure compliance with the E-Government Act of 2002 and to protect against the disclosure of other sensitive personal, financial, and trade-secret

information.

When the Notice of Intent to Request Redaction has been filed and subsequently a Request to Redact is filed within the requisite twenty-one (21) calendar days deadline, the Court Reporter shall redact the personal data identifiers as detailed in the Request for Redaction to include compliance with the E-Government Act of 2002.

The Court Reporter shall then electronically file a redacted transcript with an amended certification indicating that the transcript was amended by the redacted of certain personal identifiers at the request of the parties. Parties who have made financial arrangements with the Court Reporter will be given remote access to the redacted transcript.

After the 90-day restriction period has expired, the filed transcript, or in the event of redaction requests, the redacted transcript will be available for inspections and copying at the Clerk's office and for downloading from CM/ECF system via PACER. If and when the redaction requests are made, the un-redacted version of the transcript will NOT be accessible remotely, but will be available for inspection and copying in the Clerk's office. The requisite copy fees and PACER access fee will apply.

NOTE:

If the required redaction of a transcript renders that transcript unusable because of the loss of specific information, the transcript should be filed by the E-Filer in both un-redacted and redacted format. The redacted format will be used for public access through ECF and the un-redacted format ought to be filed under seal so as to preclude public display. Details concerning redaction are set forth in Section 13 of this manual, in Administrative Order 2005-28, the ECF User Manual, and in various teach material available on the District Court's Web site.

### **7.5.1 Social Security Appeal Case Transcripts**

- (a) Submitted pursuant to Administrative Order 2006-05.

### **7.6 Filing of Affidavits**

Affidavits must be electronically filed via the ECF filing system, The affidavit may be a scanned PDF copy which should include a digitized signature of the affiant or if redacted, the document must reflect "signature redacted". The filer must also attest that the original ink-signature affidavit is in the filer's possession. It is the policy



of this District Court that original, ink-signed affidavits should be maintained by the filer for at least five (5) years after the pertinent case has concluded and should be readily available if needed for evidentiary purposes.

## **8. Sealed Documents** (*See* also Appendix A.)

### **8.1 Filing of Motions and Other Documents**

It is the policy of this District Court, consistent with its past practice regarding paper filings, that whenever an E-Filer desires to electronically file a document under seal, the E-Filer may do so, and ECF has been designed to allow the filer to make that option available whenever desired. The court will subsequently decide precisely how long a sealed filing will remain under seal, but initially any document can be filed under seal. Please consult the ECF User Manual for the mechanics of effectuating a sealed filing.

Further, a document subject to an existing sealing order or sealing statute shall be filed electronically under seal pursuant to those procedures set forth in the ECF User Manual.

#### NOTE:

Any document filed under SEAL will not be accessible via PACER or the Court's public terminals. The Court's electronic filing system will notify parties that a Sealed Motion or Other Sealed Document has been filed via Notice of Electronic Filing; however, the document will not be accessible. The submitting filer is responsible for service of the Sealed Motion or Sealed Document on all opposing counsel or parties.

### **8.2 *In Camera* Submissions**

*In Camera* submissions shall be presented to the court by direct e-mail to the presiding Judge's ECF E-mail Account with notice or a copy to opposing counsel or parties. (*See* Web site for e-mail addresses).

### **8.3 *Ex Parte* Submissions**

*Ex Parte Submissions* should be submitted along with all associated documents directly to the presiding Judge in the pertinent case via e-mail to that Judge's ECF e-mail box. Proposed Orders for *Ex Parte* Submissions shall be submitted in a word processing format only. (*See* Web site for e-mail addresses).

## **9. Document Retention Requirements**

A document that is electronically filed and requires an original signature other than that of the E-Filer, such as an affidavit, must be maintained in paper form by the E-Filer and/or the firm representing the party on whose behalf the document was filed. The document must be retained for no less than five (5) years after the time for all appeals has expired or the judgment otherwise becomes final. On request of the court, the E-Filer or law firm must provide the original document.

Such papers in criminal cases filed on behalf of the government shall be retained by the Office of the United States Attorney or the United States Department of Justice. On request of the court, the Office of the United States Attorney must provide the original document for review.

## **10. Electronic Signatures of E-Filers**

### **10.1 Effectiveness of Electronic Signature**

The E-Filer's User ID, password, and electronic signature, i.e., "s/ typed E-Filer's name," serve as the E-Filer's signature on all electronically-filed documents and for all purposes under Fed. R. Civ. P. 11, all other Federal Rules of Civil and Criminal Procedure, the Local Rules of this District Court, and any and all other purposes for which a signature is required in connection with proceedings before the court. Documents submitted under an E-Filer's login and password must include an "s/ typed E-Filer's name" in the space where the E-Filer's ink-signature would otherwise appear, and the failure to provide that electronic signature will render the filing deficient.

#### **Note:**

In many law firms and governmental agencies an attorney might prepare and sign paper-based documents for another attorney with who he or she is associated. In terms of creating an effective electronic filing make sure that the login (being the User ID and password) account is the exact same account of the individual who is electronically signing the document being filed through ECF. A mismatch between the login account and the electronic signature ("s/name") will be grounds for rejecting that filing.

## **10.2 Identifying Information Required**

An electronically-filed document must include a signature block and must set forth the name, address, telephone, and e-mail address of the filing attorney along with the BPR Registration Number. This signature block should look something like the following:

s/ John Allen Smith  
John Allen Smith, BPR#11222  
Smith & Smith  
100 North Main Street, Suite 1000  
Memphis, TN 38103  
(901) 123-4567  
[JASmith@SmithandSmith.com](mailto:JASmith@SmithandSmith.com)

## **10.3 Misuse of E-Filer Login and Passwords**

An E-Filer is solely responsible for and shall protect the security of the E-Filer's password-protected account. No E-Filer may knowingly or willfully permit or cause an E-Filer's login and password to be used by anyone other than an authorized agent of the E-Filer. An E-Filer shall immediately notify the Clerk of Court if the E-Filer learns or suspects that his or her login or password has been used without authorization. An E-Filer may change his or her password without contacting the court, using the procedures set forth in the ECF User Manual. An E-Filer is responsible for overseeing non-attorney employees with respect to electronic filing executed on the attorney's behalf.

## **10.4 Multiple Signatures**

A document requiring the signatures of more than one person shall be filed electronically by a single E-Filer, unless otherwise ordered by the court or authorized in the ECF User Manual.

The E-Filer who files the document does NOT need to obtain original signatures of consenting signatories on a separate, paper copy of the document to be filed, though there is no objection to the E-Filer doing so. The E-Filer submitting the consent document should file the document electronically, clearly representing the consent of the other signatories by an "s/ name of other consenting parties" typed in the space where a signature would appear. It is strongly suggested that when multiple

signatures are submitted in the above manner, the E-Filer should specifically state the date and nature of such consents. For example, the consenting signature might appear as:

*“s/John Allen Smith (per telephone consent dated 12/22/10 at 3:00 PM)”* or  
*“s/John Allen Smith (per email consent dated 12/22/10).”*

A non-filing signatory or party who disputes the authenticity of an electronically-filed document containing multiple signatures or the representation as to consent of a named signatory must file an objection to the document within ten (10) days of receiving the NEF applicable to that filing, unless additional time for disputing such signatures is provided by court order. Since there is no requirement that an E-Filer obtain ink-signatures when filing consent documents containing multiple signatures, there is no retention period applicable to any hard copies of such document(s).

## **10.5 Signatures of Persons Other Than E-Filers**

As previously discussed in Section 7 of this manual, documents containing the signature of persons other than E-Filers, e.g., third-party affidavits, are to be filed electronically as a scanned image. Original copies of scanned ink-signature documents must be retained in compliance with the court’s retention requirements, which is no less than five (5) years after the time for all appeals has expired or the judgment otherwise becomes final.

## **11. Service**

### **11.1 Service of Process (Summons)**

Service of process must be made in accordance with Fed. R. Civ. P. 4, which does not allow for electronic service of process or, generally, obtaining personal jurisdiction through electronic means. *See* Fed. R. Civ. P. 4.

## **11.2 Service of Other Papers**

### **11.2.1 Service on E-Filer and *Pro Hac Vice* Participants**

#### **(a) Automatic Service**

Upon the electronic filing of a pleading or other document, the court's ECF System will automatically generate and send a Notice of Electronic Filing (NEF) to all E-Filers and to all *Pro Hac Vice* Participants associated with that case. Transmission of the NEF constitutes service of the electronically filed document on E-Filers and *Pro Hac Vice* participants. Service of the NEF on *Pro Hac Vice* Participants is provided. See 11.2.2 re: Service on Persons other than E-filers.

#### **(b) Content of Notice of Electronic Filing**

The NEF will include, among other information, the time of filing, text of the docket entry, and name of the party and/or attorney(s) required to receive the notice. If a PDF document is attached to the docket entry, the NEF will also identify the person filing the document, the type of document, and a hyperlink to the filed document. The hyperlink will allow anyone receiving the notice by e-mail one opportunity to retrieve and download the document without cost. Notwithstanding the above description of an NEF, the precise content of an NEF shall be that information automatically generated by the ECF system. Consult the various training materials located at the District Court's Web site for illustrations of a typical NEF.

#### **(c) Failed Transmission of NEF**

If the E-Filer becomes aware that the NEF was not transmitted successfully to other E-Filers or *Pro Hac Vice* Participants, or that the notice is deficient, e.g., the hyperlink to the document on the docket is defective, the E-Filer shall, upon learning of the deficiency, serve the electronically-filed document by traditional means, such as e-mail, hand delivery, facsimile, or first-class mail. Proof of such service shall be filed with the court electronically within one (1) business day after service. An E-Filer who becomes aware of a

defective NEF should also immediately contact the Clerk's Office through the ECF Help Desk and notify them of such defect.

#### **11.2.2 Service on Persons Other Than E-Filers**

*Pro Se* parties and attorneys who are members of this District Court's bar but are not E-Filers, e.g., attorneys who have been excused from ECF participation by order of court, shall be served with electronically-filed documents through traditional means of service. Service of the electronically filed documents must be accompanied by a copy of the NEF and must include a Certificate of Service that includes the names and addresses of all persons served and the means of service on each person served.

#### **11.2.3 Time to Respond Under Electronic Service**

In accordance with Fed. R. Civ. P. 6(d) and Fed. R. Crim. P. 45(c), service by electronic means, even though immediate in nature, is NOT treated the same as service by mail, so three (3) days are NOT added to the prescribed period to respond.

### **11.3 Certificates of Service are No Longer Mandatory**

Except as provided in 11.2.2, Certificates of Service are not required for documents filed through the ECF System which generate an NEF.

## **12. Transmission and Technical Failures, Completed but Defective Filings, and Erroneous Filings**

### **Note:**

This is a critical section for the E-Filer to understand because a failed electronic filing can result in missed compliance deadlines or statutes of limitation, so E-Filers are urged to review the various training materials available at the District Court's Web site to obtain more detailed procedures to follow in the event of a failed or defective electronic filing. Generally, relief from electronic filings that have failed due to technical or transmission problems is obtainable only through the court. Basically, there are three areas to consider:

- (1) Attempted electronic filings that fail due to technical difficulties on the E-Filer's end of the transaction, which would also include third-party failures such as cable and telephone line disruptions;
- (2) Attempted electronic filings that fail due to technical difficulties on the District Court's end of the transaction; and
- (3) Completed electronic filings that incur no transmission failure but which are nevertheless defective in form or content.

### **12.1 Failed Electronic Filings Attributable to Technical Problems on the E-Filer's End**

If an E-Filer is unable to complete an electronic filing because of technical problems on the filer's end (or due to technical problems attributable to one of the E-Filer's suppliers, such as an Internet Service Provider or a cable or telephone line company), the E-Filer can attempt to submit the proposed electronic filing in another, more traditional manner (*See* Section 12.4.3 below) by filing a motion for leave of court to file manually for good cause shown. The E-Filer might also want to consider a request for an extension of time in case a court-imposed filing deadline has lapsed because of this failure.

Alternatively, the E-Filer can utilize the public computer facilities for last-minute or emergency on-site electronic filing which are located in both Jackson and Memphis (if there is no problem in doing so during the Clerk of Court's regular business hours). The Clerk of Court has developed procedures for handling these on-site electronic filings or processing manual filings (if a motion for leave to file in a non-electronic manner has been granted by the court). Please review the training materials available on the Court's Web site for further details.

\*\*\*\*\*

**WARNING!! The District Court has discretion to grant a motion for leave to file manually and to extend a court-imposed filing deadline for good cause shown, but the District Court has no discretion to extend a statute of limitations or other statutorily mandated deadline because of a technical or transmission failure attributable solely to the E-Filer.**

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## **12.2 Failed Electronic Filings Attributable to Technical Problems on the Court's End**

If an E-Filer is unable to complete an electronic filing because of technical or transmission problems with the ECF System on the Court's end, this would be analogous to the courthouse not being available for filings due to exigent or emergency circumstances. In that event, the deadlines for filing otherwise applicable would be extended in accordance with Fed. R. Civ. P. 6, which would determine the re-calculation of the new filing deadlines.

For purposes of this provision, the ECF System will be considered to be unavailable for electronic filing if the Web site (which serves as the ECF portal) is unable to accept filings continuously or intermittently for more than one (1) hour occurring after 12:00 noon local time (Central Time zone) on any given day.

If an E-Filer experiences a technical failure preventing completion of an electronic filing because of a problem with the ECF System, the E-Filer may elect to submit the document to the Clerk of Court using one of the Methods of Alternative Submission listed below (*See* Section 12.4.3 below). In that case, the filed document must be accompanied by a certification, signed by the E-Filer, that the E-Filer has attempted to file the document electronically at least twice, with those unsuccessful attempts occurring at least one (1) hour apart after 12:00 noon. This alternative submission might be made, for example, when the filer is concerned about the mechanics of Rule 6 extensions.



**Note:**

If a filer elects to file a document using an Alternative Method of Submission (as defined in Section 12.4.3 below), the filer must still file an electronic version of that document through the ECF System on a timely basis, which is more fully described in Section 12.4.2 below, because Alternative Methods of Submission are not deemed to be proper filings but are used merely to preserve filings dates and times.

### **12.3 Completed but Defective Electronic Filings**

The Clerk's Office will examine most electronic filings as part of the ECF quality control process. If a completed filing is defective for any reason, the E-Filer will receive an automated Deficiency Notice describing the nature of the deficiency. Examples of deficient filings might include a garbled or incomplete Internet transmission, receipt of a document that on inspection is not what it was purported to be, an electronic document that is missing a required signature, or a motion with an attached proposed order. After the E-Filer receives a Notice of Deficiency, he or she will have twenty-four (24) hours from the date and time of the original filing to file a corrected document in order to preserve the date and time stamp of the original, deficient filing. If the deficient filing is not corrected within this 24-hour period, the original filing is no longer in effect for any reason and can no longer be used to preserve its date and time stamp. Basically, no document will have been filed relative to the subject matter of the first, deficient, filing.

### **12.4 General Provisions Regarding Failed Electronic Filings**

#### **12.4.1 ECF Help Desk**

The point of contact for an E-Filer who is experiencing technical difficulty shall be the court's "ECF Help Desk" at [cmecfhelpdesk@tnwd.uscourts.gov](mailto:cmecfhelpdesk@tnwd.uscourts.gov) as posted on the District Court's Web site, in the training materials, and in virtually all publications related to electronic filing in this District Court. The court's "ECF Help Desk" is open during regular business hours (Monday through Friday from 8:30 AM until 4:30 PM, except on Federal Holidays).

#### **12.4.2 The Alternative Method of Submission is not in Itself a Proper Filing**

The non-electronic submission of a filing that, but for, the technical failure of the ECF System should have been filed electronically shall be effective only to preserve the time for filing. The subsequent electronic filing will be deemed filed at the time the Alternative Method of Submission was accomplished *provided that* the electronic filing is accomplished within twenty-four (24) hours after the court's technical failure is remedied.

#### **12.4.3 Methods of Alternative Submission**

In the event of a technical failure on the court's end, the E-Filer may preserve the time for filing, if the filer does not want to rely on re-computing a new filing deadline under Fed. R. Civ. P. 6, by submitting the document using one of the following Alternative Methods of Submission:

- (a) **Facsimile** - through facsimile transmission of the entire document to the Clerk's Office (utilizing facsimile number (901) 495-1250 for Memphis and (731) 421-9210 for Jackson; or
- (b) **Physical Presentation** - by physically delivering a copy of the document to the Clerk's Office regular business hours.

#### **12.5 Erroneous Filings**

In the event that an E-Filer successfully completes an electronic filing but has mistakenly filed the incorrect document (as where, for example, an answer was intended but a motion to extend time was filed *or* where confidential notes, such as trial strategies, were mistakenly attached to a pleading *or* where a draft version, vis-à-vis, a final version of a document was filed), the E-Filer can contact the Clerk's Office and request that the erroneous filing be sealed from public view pending a resolution of the manner by the court. The E-Filer requesting the sealing of an erroneous filing must provide an e-mail authorization to the Clerk's Office even if a verbal request for sealing has been made and acted on. If a confirming e-mail is not received by the Clerk's Office within twenty-four (24) hours of the sealing request, the Clerk's Office will un-seal the erroneous filing. The sealing, once made, will remain in place indefinitely unless and until further order of court directing that it be unsealed is obtained. Note that this sealing request must be made during regular business hours and note further that even the immediate sealing of an erroneous order will not prevent or eradicate the NEF that was generated at the time of filing.

### **13. Public Access and Sensitive Information**

#### **13.1 PACER Access Different from ECF Access**

With limited exceptions (e.g., Social Security and ERISA cases), a person may retrieve information from the ECF System through the court's Internet Web site by obtaining a PACER ("Public Access to Court Electronic Records") login and password. While only registered E-Filers may file documents using the ECF System, any person, whether a registered E-Filer or not, who has PACER access may retrieve docket sheets and documents in civil and criminal cases.

#### **13.2 Limited Access Cases**

Certain types of cases and documents may be designated as limited access due to potential privacy issues arising from the contents of the filings. Examples might include Social Security and ERISA cases and certain aspects of criminal cases. Limited access cases on the ECF System shall be accessible by certain court personnel and E-Filers for that case only, but any request for limited or special access to cases not otherwise available to the public must be submitted to the court for an appropriate order.

*NOTE:*

In order to view the documents in such cases, you must be an Attorney of Record for said case and use both your ECF login and password and your PACER login and password. If you are logged into CM/ECF and you access a document, it will prompt you to enter your login and password again. At that time you would enter your PACER login and password. If you are logged into PACER and you access a document, it will prompt you to enter your login and password again. At that time you would enter your CM/ECF login and password. The dual password use is required for viewing restricted filings in criminal cases as well.

#### **13.3 Sealed Cases and Documents**

As discussed elsewhere, any case or document under seal shall not be available to the public through electronic or any other means; however, attorneys may be permitted access to sealed documents in cases in which they appear with permission of the court.

## 13.4 Privacy

Attorneys are responsible for ensuring that their clients have sufficient information so that informed decisions are made regarding the inclusion, redaction and exclusion of personal information in filings in this court.

### 13.4.1 Compliance with E-Government Act of 2002 (as Amended)

In compliance with the E-Government Act of 2002, a party or attorney wishing to file a document containing the personal identifiers listed below (*See* Section 13.4.2), or other sensitive information (*See* Section 13.4.3), must provide a completely redacted electronic version of that document for public viewing through ECF or PACER and, if the E-Filer so chooses, an un-redacted version under seal to be retained and used by the court as part of the record.

### 13.4.2 Redaction of Certain Personal Identifiers

To protect personal privacy and other legitimate interests, attorneys and parties shall refrain from including, or shall redact where inclusion is necessary, the following personal identifiers in all documents filed with the court, whether filed electronically or otherwise:

- (a) **Social Security Numbers.** If an individual's social security number must be included in a pleading, only the last four digits of that number shall be used.
- (b) **Names of Minor Children.** If the involvement of a minor child must be mentioned, only the initials of that child shall be used.
- (c) **Dates of Birth.** If an individual's date of birth must be included in a pleading, only the year shall be used.
- (d) **Financial Account Numbers.** If financial account numbers are relevant, only the last four digits of these numbers shall be used.
- (e) **Home Address Information.** If the home address of a person must be included, only the city and state shall be listed.

### **13.4.3 Protection of Other Sensitive Information**

Attorneys and parties shall exercise caution and shall consider redaction or consider filing a sealed document if any of the following information is referenced:

- (a) Any personal identifying number, such as driver's license number;
- (b) Medical records, treatment records, or diagnoses;
- (c) Employment history;
- (d) Individual financial information;
- (e) Proprietary or trade secret information;
- (f) Information regarding an individual's cooperation with the government;
- (g) Information regarding the victim of any criminal activity;
- (h) National security information; or
- (i) Sensitive security information as described in 49 U.S.C. § 114(s).

Any document containing the above information shall be filed electronically in a redacted version, meaning that all protected information must have been removed, and as noted elsewhere, if the attorney who submitted this redacted version believes it is necessary to do so, he or she may file a second, un-redacted version under seal as part of the case record.

### **13.4.4 Compliance and Sanctions**

Responsibility for redacting the above-listed information rests solely with attorneys and the parties. The Clerk of Court will not review filings for compliance. Attorneys and the parties are cautioned that their failure to protect the above-listed information may subject them to the disciplinary power of the court and may be the basis for claims against them.

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# **APPENDIX B**

## Electronic Case Filing (ECF ) Attorney User Manual

# Electronic Case Filing Attorney User Manual



## Western District of of Tennessee

Version IV (June 29, 2012)

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## I. GENERAL

### A. Overview

#### 1. Use of this Manual and the ECF Policies and Procedures

This manual provides instructions on how to use the Western District of Tennessee's *Electronic Case Filing (ECF) System*. This system allows properly authorized attorneys (*Filing Users*) to electronically file and retrieve documents. It also facilitates the electronic service of documents on other *Filing Users*.

Please note that screen captures are for purposes of demonstration and may not be exactly what is displayed from the current version of ECF and/or your browser.

Use of the *ECF System* also requires a working knowledge of an internet browser (e.g., Internet Explorer or Netscape) and the ability to use a *PDF* reader-writer program (e.g., Adobe Acrobat). Only the most generic instructions as to use of these type programs are provided in this manual.

#### 2. Help Desk

If you have questions about the *ECF System* after reviewing the ECF Manuals and completing the ECF On-Line Training or have problems filing a document, please email your questions and/or concerns to [cmecfhelpdesk@tnwd.uscourts.gov](mailto:cmecfhelpdesk@tnwd.uscourts.gov). Clerk's staff will be available to help you between 8:30 a.m. and 4:30 p.m. Central Time, Monday through Friday (excluding holidays) .

This manual provides instructions on use of the *ECF System* and, therefore, includes some general information on types of external programs and hardware you will need for this purpose. Court personnel cannot give you technical advice or assist you with specific questions regarding your chosen hardware, software programs (e.g., specific *PDF* reader-writer programs), or the internet (e.g., internet browsers). Such questions should be directed to your hardware, software, or internet service provider.

Systems can offer local technical support issues ranging from password problems, scanning issues, document conversion errors, etc.

Additional information regarding electronic filing can be obtained from our web page: [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov)

or by writing to:

CM/ECF- Western Division  
United States District Court  
167 N. Main, Ste. 242  
Memphis, TN 38103

or to: CM/ECF- Eastern Division  
United States District Court  
111 S. Highland Ave., Ste. 262  
Jackson, TN 38301

NOTE: Filing by facsimile is not allowed, but a facsimile submission is allowed to preserve the time for filing in the event of a *Technical Failure* or other equipment failure.

### ***ECF System Website***

<https://ecf.tnwd.uscourts.gov>

Questions regarding *PACER* should be directed to the PACER Service Center. *See infra* § I.B.3.

<http://www.pacer.gov/>

The PACER Service Center (PSC) is the National Technical Help Desk. For technical questions, contact the PACER Service Center (PSC) at 1.800.676.6856. PSC is responsible for public support of the application including general setup questions, password administration, technical questions, and billing services. They will answer questions about browser problems or connection issues, installing and using Adobe Acrobat, and any PACER questions. Users may also e-mail questions which are answered on a daily basis. Telephone support is offered from 8:00 a.m. to 5:00 p.m. Central Time. The PSC e-mail address is [pacer@psc.uscourts.gov](mailto:pacer@psc.uscourts.gov).

### **3. The Court's Web Page and *ECF System Capabilities***

The court's web page ([www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov)) will allow anyone with internet access to:

- View or download the most recent versions of the court's ECF manuals, handbooks, and forms referenced in said manuals;
- Self-train on the web-based *ECF* tutorial and computer-based training modules;
- Practice filing documents in the *ECF* "training" database;

*Filing Users* may also:

- View and save documents hyperlinked to the *NEF* (one time "free look");
- Electronically file documents in actual cases and electronically serve them on other *Filing Users* and *Pro Hac Vice Participants (PHV Participants)*.

Persons with *PACER* accounts may also:

- View docket sheets;
- View filed documents in all cases (subject to some confidentiality limitations);
- View various reports (e.g., civil cases report, judgments) for cases that have been electronically filed.

#### **4. Electronic Service – Notice of Electronic Filing**

One of the major benefits of the *ECF System* is electronic service of most filed submissions.\* When a document is filed using the *ECF System*, a *Notice of Electronic Filing (NEF)* is automatically sent to the e-mail addresses provided for the *Filing Users* and *PHV Participants* in that action. The date on the *NEF* is the filed date. Filing is not complete until the *NEF* is produced.

- \* By registering as a *Filing User* or *Pro Hac Vice Participant*, an attorney consents to electronic service of all filed documents other than documents for which electronic service is prohibited (e.g., summons, complaint, indictment, and warrants).

NOTE: Be sure the *ECF System*'s address(es) is/are removed from your spam filter so it will not reject the system's e-mails.

Individuals who receive electronic notification of a filing are permitted one "free look" at the document by clicking once on the associated hyperlinked document number embedded in the *NEF*.\*\* The document may be saved to your computer at that time for future "free" access. Subsequent retrieval of the case docket sheet and documents from the *ECF System* must be made through your *PACER* account and is subject to regular *PACER* fees.

- \*\* The hyperlink to access the document will expire after the earlier of: (1) the first use; or (2) 15 days from transmission of the *NEF*. Any time that same hyperlink is accessed after it has expired, the *NEF* recipient will be asked for a *PACER* login and will be charged to view the document.

The attorney who electronically files a document must also make *Traditional Service* on *pro se* litigants and attorneys who are not *Filing Users* or *PHV Participants*.\*\*\* The *NEF* must be included with the documents served. Proof of such service shall be electronically filed with the court within one (1) business day after the electronic filing of the document (as shown on the *NEF*).

- \*\*\* The *NEF* will indicate which attorneys have received electronic service and will also list associated counsel and any *pro se* parties who have not been served via *NEF*. The *Filing User* who filed the document must make *Traditional Service* on any *pro se* parties and attorneys other than attorneys appearing *pro hac vice* who are listed as not having received the *NEF*.

## 5. Failed Transmission of *NEF*, E-Mail Accounts and Returned E-Mail

At the end of filing, the system will generate an *NEF* which verifies the transmission was received. If you do not see the *NEF* before logging out, check PACER to see if the filing is reflected on the docket. If it is, the transmission was successful. If it is not, contact the Help Desk.

After filing a document, an *NEF* will be sent by e-mail. Review this e-mailed *NEF* to ensure that there are no apparent problems with the notice (*i.e.*, the hyperlink works properly). If you did see the system's *NEF* before logging out of the system, but you did not receive an e-mailed *NEF*, check PACER to see if the document is reflected on the docket. If it is, the problem is probably with your e-mail. If it is not, the filing failed, and you should either refile or contact the Help Desk.

If the hyperlink on your e-mailed *NEF* does not work properly, contact the Help Desk. If you learn that another party did not actually receive service despite being listed as served on the *NEF*, you are responsible for further service.

You must maintain an e-mail account with enough storage space to receive electronic notices from the court.\* If the size of your e-mail account is not sufficient, *NEF* e-mails will fail and be returned to the court where they will be stored for 30 days. The court will check failed e-mails and attempt to re-send. After 30 days, they will be deleted from the system.

\* In general, an account with storage space of at least 100 megabytes is sufficient. The e-mail generated from the *ECF System* can be voluminous and exceed the size allocated for free e-mail accounts. You may need to consider purchasing extra storage space from your Internet Service Provider (ISP).

You, as the Filing User, are responsible for keeping the primary and alternative e-mail addresses you provide to the court current at all times. To make updates: on the blue ECF Tool Bar, click on UTILITIES, My Account, Maintain your email, then follow the commands for updates. The court should be notified within 24 hours if you are having difficulty with your ISP. At the same time, you should work with the ISP to resolve the problem. When the problem is resolved, notify the Help Desk so that the court can resend the *NEF* e-mails to the primary e-mail address on the account.

## 6. Participation and Transition Period

Unless excused by the court, all members of the Western District of Tennessee Bar shall register as *Filing Users*. Attorneys admitted *pro hac vice* may only participate as *Filing Users* in the case(s) for which pro hac admission was granted., and shall be required to consent to electronic service.

Pursuant to ECF Policy & Procedures 3.1: Pro Hac Vice Applicants must download Motion for Leave to Appear Pro Hac Vice, and e-file completed form into the appropriate case, along with a Certificate of Good Standing of the highest court in which admitted, and email a proposed order to the presiding judge's ECF mailbox.

Attorneys are encouraged to begin participation as soon as possible to maximize the benefits of the system, including electronic service of filed documents and notice of court orders and hearings.\*

\* In conjunction with start up of the *ECF System*, the clerk's office will cease routine use of facsimile to deliver hearing notices and orders to attorneys. *Filing Users* and *PHV Participants* will receive immediate notice of filings through *NEF's*. Parties proceeding *pro se* and attorneys admitted to this court's bar who are not *Filing Users* will receive hearing notices and orders through regular mail unless otherwise directed by the court.

## 7. Signatures

Unless an individual judge's preference indicates otherwise, the *Filing User's* login and password in conjunction with an s/ and the *Filing User's* typed name on the filed document serve as the signature: **s/ John Doe**

Documents that require multiple s/attorney names should be filed in compliance with ECF Policy and Procedures Section 10.4 which authorizes the *Filing User* to add multiple attorney names. Each attorney shall be represented by an s/attorney name and will be added to the case. The attorney filing the document represents that he or she has obtained the original signatures on a hard copy of the document in question and has that document in his or her possession.

Some documents which bear the signatures of persons other than the particular *Filing User* who filed the document (including other *Filing Users*) must be electronically filed as scanned images (e.g., affidavits) except where other procedures are required (e.g., documents signed by multiple attorneys). Special rules apply to a *Filing User's* retention of documents containing original signature(s). See ECF Policy and Procedures Section 10.5.

## 8. Docket Text Orders and Notices

Judges, their staffs, and the clerk's office have the ability to make docket entries which do not include an attached *PDF* document. For example, a judge may enter a text order granting or denying a motion by entering the ruling directly on the docket.

This docket entry will generate an *NEF* reflecting the content of the docket entry, however there will not be a hyperlink to an image associated with the docket entry. The *NEF* is delivered to all parties and serves as notice of the order. Notices of hearings may also be given through service of an *NEF* reflecting a text entry on the docket.

The *NEF* is electronically delivered to all *Filing Users* and *PHV Participants*. A hard copy will be delivered by other means (generally by regular mail) to all other attorneys and to *pro se* parties.

## 9. Quality Assurance

The clerk's office will perform a quality assurance review of new civil case filings entered by *Filing Users*. If the clerk's office discovers an error that requires correction, the clerk's office will make an annotation on the docket which will generate an *NEF*. The *NEF* notifies you of a Deficiency Notice or a Courtesy Notice, depending on the nature of the error. The *NEF* is sent to all case participants and to the judge to whom the case is assigned.

The *NEF* will either indicate that the clerk's office policy does not require any further action (Courtesy Notice) or will instruct you to take further action to remedy the apparent error (Deficiency Notice). For instance, if the *Filing User* failed to pay the filing fee, a Deficiency Notice will be entered giving the *Filing User* one business day to correct the deficiency.

While the quality assurance review conducted by the clerk's office will uncover some errors, other errors, particularly involving the filing of the wrong document, may be discovered only by the *Filing User* or others involved in the action.

Some common causes of erroneous filings include:

- posting or attaching the wrong *PDF* file to a docket entry;
- selecting the wrong document type from the menu;
- entering the wrong case number; or
- failing to sign document in correct format.

These type errors can be minimized or eliminated by viewing *PDF* files before posting or attaching them and by double checking entries before transactions are finalized in the *ECF System*. The *ECF System* does not permit changes or modifications to misfiled document(s) or incorrect docket entries after the transaction has been accepted.

NOTE: If an erroneous filing results in failure to meet a deadline, relief should be sought from the presiding judge.

## 10. Judicial Preferences and Proposed Orders

Different judges will have different requirements as to the filings. **Each judge's instructions and other preferences (including delivery method and timing) are posted on their individual websites.**

Proposed orders are to be sent in word processing format (e.g. WordPerfect, Microsoft Word) to the assigned judge's chambers e-mail address which can be obtained from our web page under Case Information, Chambers Email Addresses or by calling the clerk's office.



## 11. Technical Failure

A *Technical Failure* is defined as a malfunction of court-owned or court-leased hardware, software, or telecommunications facilities which results in the inability of a *Filing User* to electronically file a document. *Technical Failure* does not include malfunctioning of a *Filing User's* equipment, hardware, or software. facsimile numbers are provided on the last page of this manual or, if you still have e-mail functionality, calling the Help Desk for instructions and a possible e-mail address to use for that filing). You must still perfect proper electronic filing within one business day after the *Technical Failure* is remedied.

## 12. Malfunction of *Filing User's* Equipment

If **your** equipment malfunctions, either hardware or software, you may preserve your time for filing using the same methods as allowed for *Technical Failures*. You must still perfect proper filing within one business day after preserving your time. The filing should be perfected by electronic filing on the *ECF System*. In the event electronic filing is not possible, you should call the Help Desk to arrange filing by the *Traditional Filing Method* or other means (e.g., if you still have e-mail functionality, you may be provided with a specific e-mail address to use for that filing).

## 13. Public Access and Sensitive Information

The *ECF System* will facilitate public access to court documents. Together with the benefits provided, comes an increased risk of misuse of sensitive information. For this reason, special rules apply to the inclusion of confidential business information, as well as certain personal information (e.g., names of minors, personal identification numbers, financial information, and identifying information relating to jurors). These rules place the burden on the individual making the filing to ensure proper protection.\*

- \* The same risks apply regardless of whether the document is filed by the *Traditional Filing Method* or electronically through the *ECF System*. The same protections should, therefore, be applied regardless of the filing method.

## 14. Attachments and Exhibits

Attachments and exhibits to motions or memoranda must be submitted in electronic form as attachments to the main document. The following rules govern these attachments:

**Excerpts.** Only pertinent excerpts of the referenced document(s) should be submitted unless the full document is sufficiently short or the relevant excerpts so extensive that submission of excerpts would not result in a significantly shorter document. Excerpts should be identified as such and should include appropriate identifying and authenticating pages (e.g., deposition cover page or first and last pages of contracts).

**Originals.** The original or complete hard copy of a document for which excerpts are filed electronically need not be filed unless requested by the court.



**Size.** A single attachment may not exceed 10 MB (10,000 KB) in its *PDF* form.

**Scanning Guidelines.** Documents which are scanned from paper, rather than being generated via a word-processing program, should be scanned at 300 dpi and in black- and-white. Scanning at higher resolutions, or in color or greyscale, will result in much larger documents, which are likely to exceed the 10 MB limitation.

**Multiple Attachments.** Multiple exhibits (or other attachments) may be linked to the primary document as individual attachments or, if they do not exceed the allowable size, combined as a single attachment. If multiple exhibits are linked as a single attachment, they shall include a cover sheet indexing the exhibits. If this method is used, the *Filing User* is strongly encouraged to include internal bookmarks to aid the court in electronically locating the proper exhibit.

## **B. Getting Started**

### **1. Hardware and Software Requirements**

Technical requirements are minimal and inexpensive. All that is needed is access to a personal computer with:

- the ability to create or convert documents into *Portable Document Format (PDF)* (one or more of the following):
  - *PDF* writer software (*e.g.*, Adobe Acrobat)
  - a word processor that can create *PDFs*
- a scanner and software to create *PDFs*
- an internet connection to access the *ECF System* and e-mail. Dial-up connections work, but a faster connection (DSL, high speed cable, etc.) is recommended.
- an approved internet browser. The *ECF System* has been tested and works correctly with Internet Explorer Version 7 and 8, and Mozilla Firefox 3.5. Although not rigorously tested and certified, the *ECF System* also seems to work equally as well with Internet Explorer 9, Google Chrome, and later versions of Mozilla Firefox.
- *PDF* reader software (such as Adobe Acrobat Reader)
- an e-mail address
- an *ECF* account
- a *PACER* account. While *Filing Users* may file documents without a *PACER* account, they will be limited in their ability to retrieve documents or to query the *ECF System* without a *PACER* account.

*Portable Document Format (PDF)* is the key to the system. *PDF* makes all documents viewable in their original format on any computer whether they were scanned or converted from a word processing document.

## 2. Credit Card Requirement

In order to file an initiating or other document which requires payment of a filing fee (e.g., motion for *pro hac vice* admission), you must follow the applicable policy in this manual - . Two exceptions to this rule are initiating an action *in forma pauperis* and filing notices of appeal (which may, in some instances, be filed without prepayment of the filing fee).\*

- \* If you are seeking to file the action *in forma pauperis*, you may initiate the action without prepayment of fees by including an electronically-filed Application to Proceed without Prepayment of Fees along with your initiating documents. You may wish to contact the Help Desk for additional assistance.

## 3. PACER Registration

*Filing Users* must have a *PACER* account in order to view filed documents (except the one “free look”) and to use the Query and Report features of the *ECF System*. If you do not have a *PACER* login, contact the *PACER* Service Center to establish an account. You may call the *PACER* Service Center at 1.800.676.6856 for information or to register for an account. Also, you may register for *PACER* online at:

<http://www.pacer.gov/register.html>

A link to *PACER*’s site is provided on the court’s website.

For CM/ECF technical questions, contact the *PACER* Service Center (PSC) at 1-800-676-6856 . PSC is responsible for public support of the CM/ECF application including general setup questions, password administration, technical questions, and billing services. Users may also e-mail questions which are answered on a daily basis. Telephone support is offered from 8:00 a.m. to 5:00 p.m. CST.

## 4. Registering as a *Filing User*

Before you are registered as a *Filing User*, you must submit a completed ECF Attorney Registration Form. You will be assigned a *Filing User* identification name (login) and password. Your login name will be the last five digits of your state issued bar id and the initials of your first and last name (e.g. 55555cg). The login and password, in conjunction with an s/ and your typed name on the document, serve as the signature for purposes of Fed. R. Civ. P. 11.

You may obtain the Electronic Case Filing Registration Form by calling the Help Desk or by going to the court’s website ([www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov)).

Completed registration forms should be faxed (901-495-1250) or mailed to:

ECF System Registration  
United States District Court  
167 N. Main St., Ste. 242  
Memphis, TN 38103

or  
ECF System Registration  
United States District Court  
Rm 262, 111 S. Highland Ave.  
Jackson, TN 38301  
Fax 731-421-9210

Once an account has been established, your login and password will be sent to you by e-mail from the clerk's office.

*Filing Users* agree to protect the security of their passwords. Should your password be compromised, you are responsible for immediately changing it according to the instructions provided with your login and password and in this manual. If you lose or forget your password, call the Help Desk, and a new password will be issued. Court personnel do not have and cannot provide you with your current password.

To practice electronic filing activities, you can visit a training version of the system on the Internet at <http://ecf-train.tnwd.uscourts.gov>.

We strongly recommend that you practice in this "training" database before filing documents in the "live" *ECF System* database.

## 5. Setting up *PDF* Reader and Converting to *PDF*

You will use *PDF* software for two purposes. First, you will use *PDF* reader software to view documents filed in the *ECF System*. Second, you will use *PDF* writer software (or similar capabilities in a word processing or scanning program) to convert documents to *PDF* for filing. Only *PDF* documents may be filed using the *ECF System*.

**Important Reminder:** Before completing your transmission in the *ECF System*, be sure to preview the *PDF* document to ensure that it appears in its entirety, is not beyond the size limit, and is in the proper format.

**Preferred conversion methods.** As a general rule, converting from word processing to *PDF* is preferred over scanning because the resulting document is smaller (requires fewer bytes of storage space) and because the text is searchable.

**Some documents must be scanned.** You will be required to file a scanned image of certain types of documents. First, exhibits normally will need to be scanned rather than converted, even if the underlying document is available in word processing form. Second, certain documents bearing third party signatures (*e.g.*, affidavits) will need to be scanned. (Documents bearing multiple attorney signatures are generally handled differently. Special retention rules apply to all documents bearing an original signature when a scanned document or other document bearing a substitute (s/) signature is filed.

**Conversion using *PDF* Writer Programs.** Various vendors provide software to create *PDF* documents. The Federal Judiciary does not endorse or recommend any specific *PDF* software. For purposes of illustration, however, we provide instructions based on one commonly used program, Adobe Acrobat Writer.\*

\* These instructions are given as an illustration only. You should consult materials provided by your software vendor for more detailed instructions or if these instructions do not work. When installing and using any software, please review and follow the software vendor's directions.

If you have installed Adobe Acrobat Standard or Professional, you can convert your word processing document to *PDF* while still “in” your word processing document. While in the document, select the print function, then select “Acrobat PDF Writer” or “Adobe PDF” from the drop down list of available printers. The printer name varies based on the version of Acrobat installed on the computer. This “print” process saves the file in *PDF*, with a “.pdf” file extension. (Depending on the word processing program being used, it may be necessary to find the printer selection option elsewhere.)

**Conversion using Word Processing Program.** You may also create *PDF* files using some newer word processing programs, although this may create a larger file and is not, therefore, the preferred method. For example, in WordPerfect 9, 10, 11, and 12, you can click on “File” and then “Publish to PDF” to convert your WordPerfect file (.wpd) to *PDF*. MS-Word (up to version XP) does NOT have this capability.

**Conversion via Scanner.** Some of the latest generation of scanners have the ability to directly scan to *PDF*. Review the instructions provided with your scanner to determine if your scanner has this capability.

## Special Situations

### 6. Sealed Documents

Sealed documents may be filed in the ECF system by selecting the proper event. However, access will be restricted to court users unless an order granting access to an attorney is entered by the presiding Judicial Officer.

### 7. Filings Requiring Prior Approval

If the document you wish to file requires leave of court, such as an amended complaint filed after a responsive pleading or a document filed out of time, you should file your motion for leave via the ECF system and simultaneously email your proposed amended document to the presiding judge’s chambers email address. If your motion is granted, the order will either indicate that the document is deemed filed or will direct you to electronically file your document.

### 8. Proposed Orders

*Proposed Orders* should be submitted, in word processing format, to the e-mail address of the district judge assigned to the case. The e-mail should include the document number of any associated motion filed through the ECF system. Proposed Orders in civil cases must comply with Local Civil Rule 7.2(a)(1)(A).

## II. FILING PROCEDURES

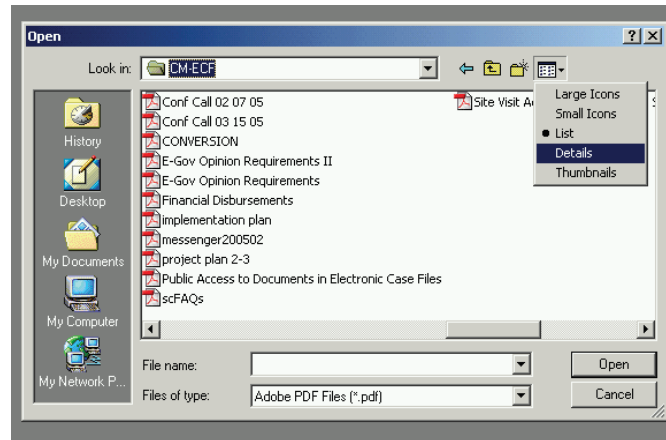
### A. Basics

#### 1. General Information

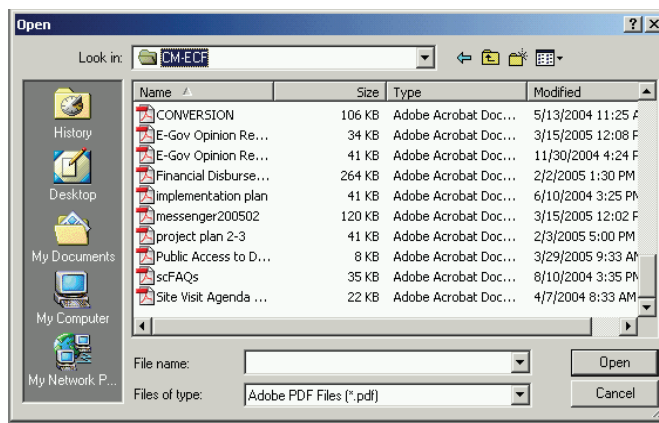
You can download or view the most recent version of the *ECF System's Attorney User Manual* (in PDF format) from the district court's web page at <http://www.tnwd.uscourts.gov>. Look under CM/ECF. In order to fully understand the *ECF System*, you must use this portion of the manual in conjunction with the ECF Policies and Procedures located on the court's web page, as well as Part I (General) and Part II (Filing Procedures), Sections B (Civil), C (Query, Reports, Utilities and Other Miscellaneous Information), and D (Help Desk) of the *Attorney User Manual*.

#### 2. Portable Document Format (PDF)

Only PDF documents may be filed using the *ECF System*. Before transmitting the file to the court, *Filing Users* should preview the PDF document to ensure that it appears in its entirety, that it is in proper format, that it is legible, that it is the correct document to be filed, and that it is the proper size. The file size limit is 10 MB (10,000 KB) If your document exceeds the limit, you must divide it into multiple attachments which do not exceed the limit.



NOTE: To determine the size of a document, choose FILE > OPEN - to access the open file dialog box. You will see a list of files in a format determined by your view settings.



Change the view to details and you will see additional file information, including file size.

10,000 KB is 10 MB.

To the extent it is practical and reasonable to do so, electronic data filed with the court should be converted from a word processing system directly to a *PDF* file using a program such as Adobe Acrobat, rather than scanning a paper copy of the document into a *PDF* image file. Conversion from word processing allows for searchability within a document. If a scanned *PDF* document is submitted, it must be previewed for readability.

Because all documents must be submitted in a Portable Document Format (*PDF*), fonts and resolution should be chosen for best quality conversion. The court only allows use of the following fonts (for documents to be converted from word processing format) because they convert best: **Times New Roman, Arial, and Courier New**. Size of font must be (at least) 12 point.

### 3. Signatures and Retention

The *Filing User's* login and password in conjunction with an *s/* and the *Filing User's* typed name on the filed document serve as the signature. Documents which bear the signatures of persons other than the particular *Filing User* who filed the document (including other *Filing Users*) must be electronically filed as scanned images (*e.g.*, affidavits) except where other procedures are required (*e.g.*, documents signed by multiple attorneys). Special rules apply to a *Filing User's* retention of documents containing original signature(s).

### 4. Conventions Used in this Manual

- Data to be entered by the *Filing User* is shown enclosed in angle brackets: <data to be entered>.
- Command buttons are represented in this manual in [**bracketed boldface type**].
- Hyperlinks are represented in underlined type.

### 5. How to View a *PDF* Document

These instructions are given based on the most commonly used *PDF* reader program, Adobe Acrobat. Other *PDF* reader programs may be used and may differently operate.

- Start the *PDF* program (*e.g.*, Adobe Acrobat).
- Go to [**File Menu**] and choose [**Open**].
- Click on the location and file name of the document to be viewed.
- If the designated location is correct, and the document is in *PDF*, the *PDF* program will load the file and display it on the screen.
- If the displayed document is larger than the screen or consists of multiple pages, the scroll bars may be used to move through the document.

- Click on [**View Menu**] for other options for viewing the displayed document. Choose the option that is most appropriate for the document.

## 6. Manipulating the Screens

Each screen has the following two buttons:

[**Clear**] clears all characters entered in the box(es) on that screen.

[**Next**] accepts the entry just made and displays it.

## 7. Correcting a Mistake

8.



Prior to transmission, use the [**Back**] button on the browser toolbar to go back and correct an entry made on a previous screen. Once the document is transmitted to the court, the clerk's office will notify you by an *NEF* if court personnel determine that changes or corrections are necessary. If you learn of an error, you should contact the Help Desk. No docket entry will be deleted. In exceptional circumstances, the clerk's office can delete the attachment to an entry, after which an *NEF* annotation of said deletion will be sent. If changes are made to an entry, e.g., a document is deleted and refiled, the clerk's office will edit the original entry to reflect the change.

## 9. A Step-by-Step Guide

The *Attorney User Manual* gives you a step-by-step guide for entering the *ECF System*, preparing a document for filing, filing a motion, and displaying a docket sheet. We suggest that you go through the steps for filing on the training database before trying to file a document in a "live" case.

## 10. Filing User Interactions

There are three general types of *Filing User* interactions allowed by the *ECF System*:

1. Entering information in data fields.
2. Using command buttons to direct system activities.
3. Mouse-clicking on hyperlinks.

Most commands in the *ECF System* can be accomplished using the mouse or keystrokes.



## 11. How to Access the ECF System

*Filing Users* can get into the *ECF System* via the Internet by going to <http://ecf.tnwd.uscourts.gov>.

*Filing Users* may also reach the *ECF System* through the court's website at <http://www.tnwd.uscourts.gov> by clicking on the *ECF System's* hyperlink. Click on **[Document Filing System]** to open the login screen and log-in to the *ECF System*. *Filing Users* can also access the training database by going to the court's website.

## 12. Logging In

This screen is the login screen.

Enter your *ECF System* login and password in the appropriate data entry fields. All *ECF System* login names and passwords are case sensitive.

Use your *ECF System* login and password if you are entering the system to file a document or to maintain your account. If you only wish to enter the *ECF System* to query the database for case information or to view a document, use your *PACER* login and password. *PACER* charges a fee to view the *ECF System's* case dockets and documents.

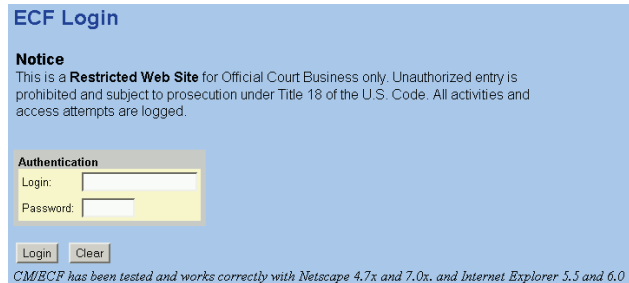
Verify that you have entered your *ECF System* login and password correctly. If not, click on the **[Clear]** button to erase the login and password entries and re-enter the correct information. After you enter the correct login and password information, click on the **[Login]** button to transmit your *Filing User* information to the *ECF System*.

If the *ECF System* does not recognize your login and password, it will display the following error message on a new screen:

### **Login failed either your login name or key is incorrect.**

Click on the **[Back]** button in your browser and re-enter your correct login and password.

Once the main menu appears, choose from the list of options on the Attorney Event Menu Bar.



The date you last logged into the *ECF System* appears at the bottom left corner of this screen. For security reasons, you should review this information each time you log-in.



If you believe your last login date and time are incorrect, or suspect an unauthorized party is using your login and password, please immediately change your password in the *ECF System* and telephone the court's Help Desk.

The *ECF System* does not allow you to log-in if you have not logged out of your prior session or if someone else, *e.g.*, your assistant, is logged in as you. You will get a screen asking if you want to cancel or "continue" the log-in process. If you choose to continue, the *ECF System* will log you on and "bump" the prior log-in.

### 13. Selecting *ECF System* Features

The *ECF System* provides the following features that are accessible from the Attorney Event Menu Bar at the top of the opening screen.

**[Civil]:** Select to electronically file all civil case pleadings, motions, and other civil documents. Select to electronically file miscellaneous documents (documents not in a case or proceeding).

**[Criminal]:** Select to electronically file all criminal case pleadings, motions, and other criminal documents.

**[Query]:** Query the *ECF System* by specific case number, party name, or nature of suit to retrieve documents that are relevant to the case. You must log-in to *PACER* before you can query the *ECF System*.

**[Reports]:** Choose **[Reports]** to retrieve docket sheets and reports. You must log-in to *PACER* before you can view *ECF System* reports other than the **[Calendar Events Report]**.

**[Utilities]:** View your personal *ECF System* transaction log and maintain personal *ECF System* account information in the Utilities area of the *ECF System*.

**[Search]:** Search the ECF menus. Note: the Search feature does not work in Google Chrome.

**[Logout]:** Exit from the *ECF System*. This prevents further filing with your password until the next time you log-in. Failure to properly log-out of the *ECF System* will leave your account logged in, and you will get a warning message asking if you want to cancel or continue login. If you choose to continue, the *ECF System* will log you on and "bump" the prior log-in. You will get a similar message if you are in the system and the idle timeout logs your account off. This will occur after 30 minutes of no activity.

*Filing Users* will use the *ECF System* to electronically self-file and docket with the court a variety of documents for civil cases.

## B. Civil

### 1. General Information

This section of the manual includes the CM/ECF Electronic Case Opening Guide, followed by the basic steps to follow when filing other civil documents. The process is consistent regardless of the event. This portion of the manual **MUST** be used in conjunction with the ECF Policies and Procedures located on the court's web page.

For questions about policies and procedures not covered in this manual, call the Help Desk or visit the court's website at [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov) for instructions.

### 2. CM/ECF Electronic Civil Case Opening Manual (click on link below)

<http://www.tnwd.uscourts.gov/pdf/content/CaseOpeningManual.pdf>

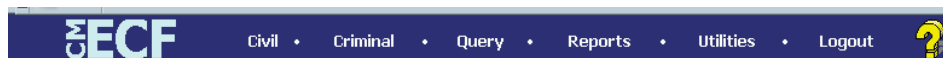
### 3. Filing Other Documents for Civil Cases

These are the basic steps involved in filing a civil document:

- a. Select the type of document to file. *See Attorney Event Menu Bar shown.*
- b. Enter the case number (*e.g.*, yr-sequential number, as in 5-1234) in which the document is to be filed.
- c. Designate the party(s) filing the document.
- d. Specify the *PDF* file name and location for the document to be filed.
- e. Add attachments, if any, to the document being filed.
- f. Modify docket text as necessary.
- g. Transmit the document (with attachments) to the *ECF System*.
- h. Receive *NEF*.

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#### a. Select the Type of Document to File



From the Attorney Event Menu Bar shown, the **[Civil]** Event window displays all of the events\* from which you may choose for your filing. This section of the *ECF System Attorney User Manual* describes the process for filing a motion in the *ECF System*. The process is similar for filing other documents in the *ECF System*.

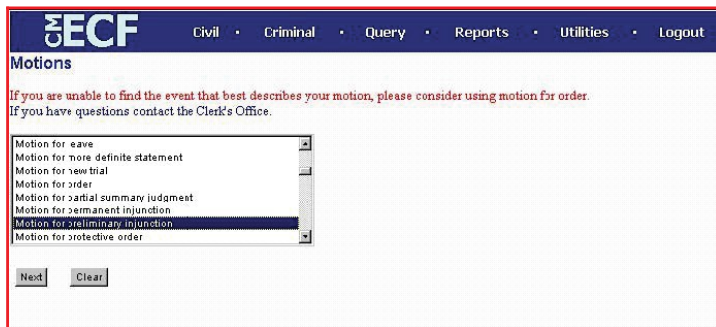
- \* If you do not see a specific event you want to use, please use a listed event that most closely reflects your filing.

Click on [Motions] under “Motions and Related Filings.”



The motions screen appears and displays a motion selection field with a scroll bar next to it. Scroll through the menu until you find the type of motion or application you wish to file.

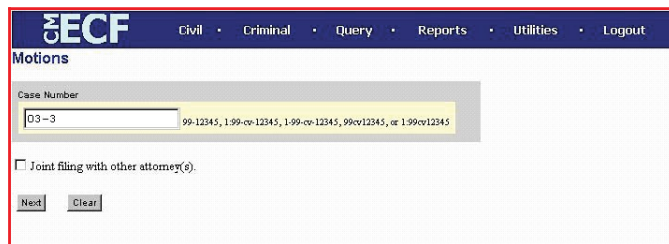
Highlight the type of motion you are filing and click on the [Next] button.



To select more than one motion, press and hold down the control key and click on each of the desired multiple forms of relief. If you do not find a category that describes your motion(s), you must choose the type that best describes the motion(s) you are filing. You may edit the docket text in subsequent steps to better describe your motion(s), if necessary. See § II.D.2.b (Linking Documents).

#### b. Enter the Case Number in Which the Document is to be Filed

The numbers to the right of the window box show the many ways you can enter a case number. For example, in the clerk's office, we usually use the year, a dash and the sequential number "05-123."



- If the number is incorrectly entered, the *ECF System* will put a message on the screen that you have entered an invalid case number. Click on the [Clear] button to re-enter.
- When the case number is correct, click on the [Next] button.
- If a civil and criminal case have the same number, the *ECF System* will let you select your case from a list of cases with the number.

### c. Designate the Party(s) Filing the Document

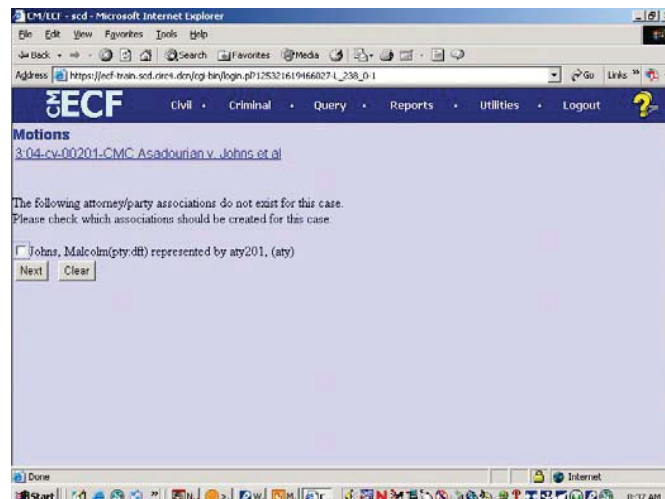
Highlight the name of the party or parties for whom you are filing the motion. If you represent all defendants or all plaintiffs, you may select the entire group by holding down the control key and clicking on each party in the group or by clicking the button for all plaintiffs or all defendants located under the “Select a Group” caption as shown.



After highlighting the parties to the motion, click on the [Next] button.

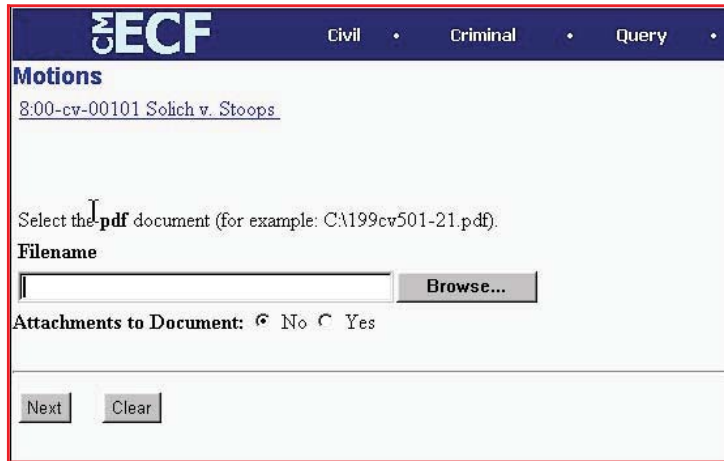
If your party does not appear, select “Add/Create New Party” option and follow system instructions for adding the party. For further instruction, visit the court’s website at [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov), under Case Information, ECF Guide to Adding Parties.

If this is your first appearance in this case, you may see a screen to associate with your party. If adding yourself as an attorney to the case, the lead attorney and notice fields should be set to “yes.”



d. Specify the *PDF* File Name and Location for the Document to be Filed

It is imperative that you attach an electronic copy of the actual document when prompted by the system. All documents that you intend to file in the *ECF System* MUST be in *PDF*. When the document is in the correct format, the naming convention will end in “pdf” (example: C:199cv501-21.pdf).



- Click on the [**Browse**] button. The *ECF System* opens a dialog box for you to find and choose your file.

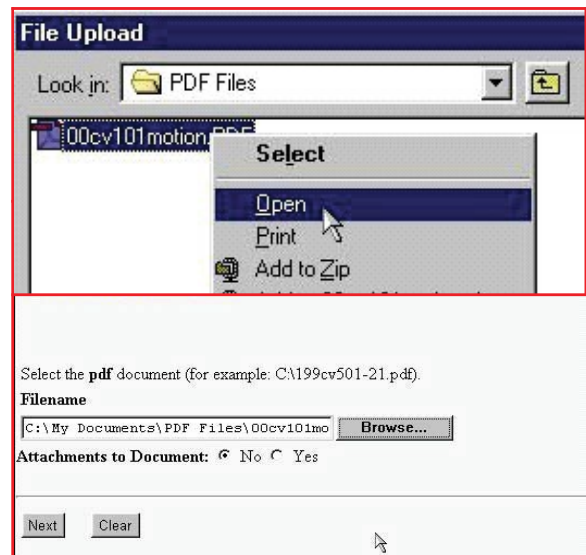
**NOTE:** Be sure the file type is “All Files” or “PDF Files.”



- Navigate to the appropriate directory and file name to select the *PDF* document you wish to file.
- Highlight the file you wish to upload to the *ECF System*.
- View the document to confirm you are attaching the correct one.

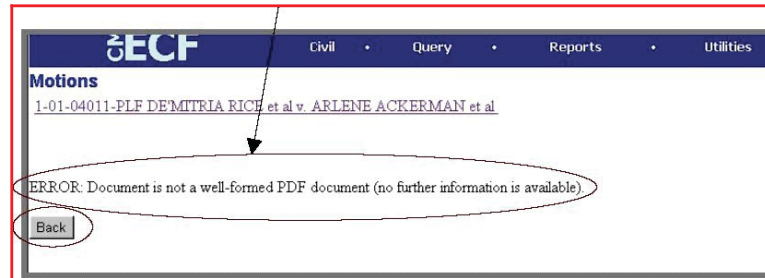
In order to verify that you have selected the correct document, right mouse click on the highlighted file name to open a quick menu and left mouse click on [**Open**]. Your *PDF* program (e.g., Adobe Acrobat or Acrobat Reader) will launch and open the *PDF* document that you selected. You may now view the document.

Once you have verified the document is correct, close the screen showing the *PDF* document and click on the [**Open**] button to



“open” it into the system. The *ECF System* closes the “File Upload” screen and inserts the *PDF* file name and location in the “Motions” screen.

If you selected and highlighted a file that is not in *PDF*, the *ECF System* will display an error message after you click on the [Next] button:



On the other hand, if you failed to select a document to file, the *ECF System* will display the error message depicted below.



If you click [BACK] or [OK] on the screens depicted, the *ECF System* will return you to a screen where you can select a document and proceed to file your motion.

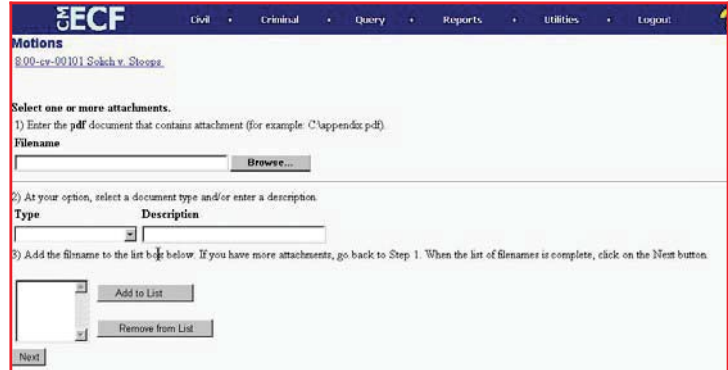
- Go back to the [Browse] button on the prior page. Select and highlight the *PDF* file of your document and continue.
- If there are no attachments to the motion, click on the [Next] button. The docket text screen appears and you may continue with your filing. (Modifying Docket Text).
- If you have attachments to your motion, click on the [Yes] button. Click on the [Next] button and proceed to add the attachments as discussed in the following section (Add Attachments).

Where possible, documents filed as attachments should be created as separate documents and converted to *PDF*, rather than scanned.

e. **Add Attachments, if any, to Document being Filed**

If you indicate you have attachments, a new screen will appear.

- Click on **[Browse]** to search for the document file name of the attachment. A short but specific description of the contents of each document that is being attached must be entered, e.g., Exhibit One-Defendant John Smith's deposition excerpts.



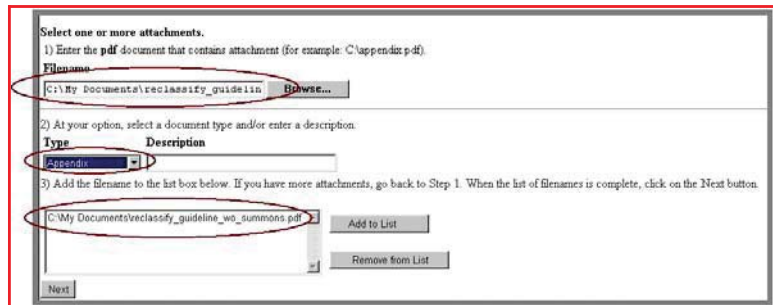
- In item 2 of the graphic shown, click on the arrow located under the header “type.” The *ECF System* opens a drop-down list where you can search and highlight the “type” of attachment from a displayed selection, if applicable.
- To describe the attachment more fully, click inside the “Description” box and type a short but specific description of the attachment. **This is a required field.**

Avoid using the following punctuation in the description:

/ \ : \* ? “ < > |

(The last one is a pipe symbol; it shares the key with the backslash above the enter key.)

- Click on **[Add to List]**.
- Repeat the sequence for each additional attachment.
- To remove a selection, click on **[Remove from List]**.



- After adding all of the desired *PDF* documents as attachments and ensuring that the descriptions are sufficient, click on the **[Next]** button.

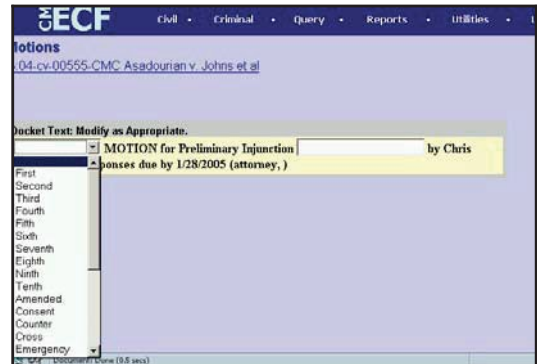
The *ECF System* adds the selected document as an attachment to the main document.



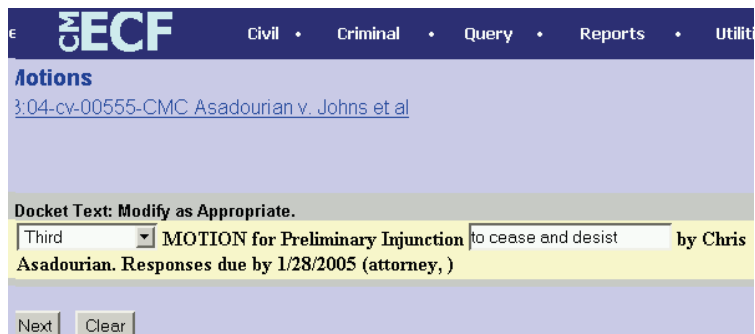
Attachments and exhibits that cannot be created via a word processor and converted to *PDF* should be scanned and converted to *PDF* (black and white, resolution 200 dpi) for electronic filing. Any document greater than 4MB in size should be divided into multiple attachments. Each attachment must be clearly described, *e.g.*, Exhibit One-Defendant John Smith’s deposition excerpts. Remember, you should file only the pertinent excerpts of documents.

**f. Modify Docket Text as Necessary**

Click on the arrow to open a modifier drop-down list. Select a modifier if appropriate.



Click in the open text area to Type additional text for the description of the document. Here is your docket text screen after it has been modified.

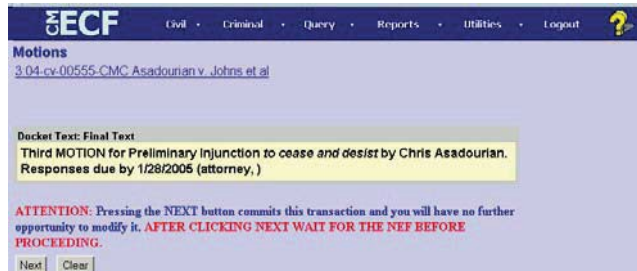


Click on the [Next] button.

**g. Transmit the Document (with Attachments) to the ECF System**

A new window appears with the complete text for the docket report.

The screen depicted contains a warning: Pressing the [Next] button on this screen commits this transaction. You will have no further opportunity to modify this transaction if you continue. At any time prior to this step, you can abort the *ECF System* filing by clicking on any option on the Attorney Event Menu Bar to abort the current transaction and the *ECF System* will reset to the beginning of the process you just selected.





- Review the docket text and correct any errors. If you need to modify data on a previous screen, click the **[Back]** button on the browser toolbar to find the screen you wish to alter.
- Click on the **[Next]** button to transmit the document. **Do not** attempt any other *ECF System* function or sign off until you see the *NEF* for your filing. Otherwise, you may interrupt the transmission, resulting in an incomplete filing.

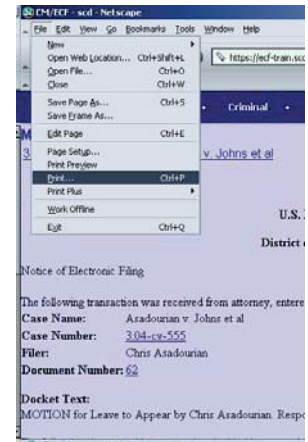
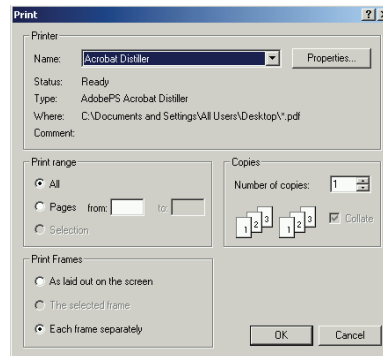
You will see the *NEF* screen which provides confirmation that the *ECF System* has registered your transaction and the document is now an official court document.

If, at this point, you desire to print or save a copy of the *NEF* to your computer from the *ECF System*, you can use the following steps.

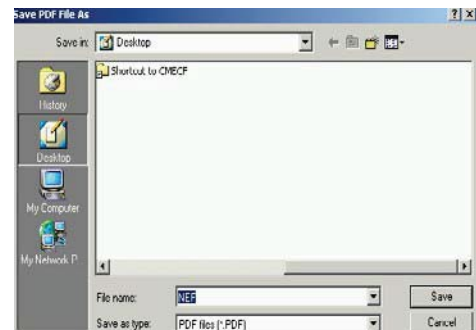
- To print, select the **[Print]** button on the browser toolbar to print the *NEF*.

- To save, select the **[File]** button on the browser toolbar, and choose the **[Print]** button from the drop-down list to save the *NEF* to a file, e.g., on the hard drive of your computer.

- Select the *PDF* Printer



- Save your document using a naming convention and location that works for you.



## h. Receive Notification of Electronic Filing

- The *ECF System* sends an *NEF*, as shown, to the e-mail address you provided the court. The *NEF* displays the date and time of your transaction and the number that was assigned to your document. You should note this number on the original document which is in your custody.



- The *ECF System* also electronically transmits the *NEF* to the additional e-mail addresses provided by the *Filing User* in the case.
- The *NEF* displays the names of individuals who have been electronically served, as well as the names of individuals who have not been electronically served.
- It is the *Filing User's* responsibility to serve hard copies of the document(s) and the *NEF* on attorneys (except *pro hac vice* attorneys) and parties who are not shown as having received the *NEF*. Local counsel remains responsible for ensuring their associated *pro hac vice* attorneys, including any *Pro Hac Vice Participants*, are notified of all document filings and court notices.
- By clicking on the **case number**, you will be asked to enter your *PACER* login and password in order to view the **docket sheet**.
- By clicking on the **document number**, the hyperlink provides you with one “free” look at the document which was just filed. If you do not open the hyperlink within 15 days of the file date, the *ECF System* will delete the hyperlink, and you will be directed to *PACER* if you wish to view the document. (Each recipient of the e-mail, e.g., individuals listed in a *Filing User's* additional addresses, gets their own “free” look.)

It is recommended that you save and/or print the e-mail *NEF* and/or filed document(s) for future use. Otherwise, future access is available via *PACER*.

## C. Query, Reports, Utilities, and Other Miscellaneous Information

### 1. General Information

This section of the manual describes other features of the *ECF System* which you need in order to efficiently file and manage the documents in your case. This portion of the manual is to be used in conjunction with the *ECF Policies and Procedures* located on

the court's website as well as Part I and Part II, Sections A, B, and C of the *Attorney User Manual*.

For questions about policies and procedures not covered in this manual, call the Help Desk or visit the court's website at [www.tnwd.uscourts.gov](http://www.tnwd.uscourts.gov) for instructions.

## 2. Features

These are the basic features you will need to efficiently file and manage your documents:

Add/Create a New Party (Civil/Criminal)  
Linking Documents (Civil/Criminal)  
Query  
Reports  
Utilities  
Logout

### a. Add/Create a New Party (Civil/Criminal)

In rare cases, you may need to add a party to the *ECF System*. If the party you represent is not listed in the “Select a Party” screen as shown, click on “Add/Create New Party.”



After you click on “Add/Create New Party,” the screen depicts the search you must first perform to see if your party is already entered in the *ECF System*.

Type the first few letters of the party's last name for an individual or the first few letters of a company's name and click on the **[Search]** button.

- Always look to see if the party is already in the *ECF System*.
- Duplicate parties create problems because *Filing Users* add a variety of names for parties, e.g., Governor Sanford, Mark Sanford, Mark C. Sanford, etc.



- Common names such as US, USA, United States, United States of America, etc., should already be in the *ECF System* in correct form. A *Filing User* should select a name already in the *ECF System* if possible.

For additional information, see Case Information, ECF Guide to Adding Parties on the court's website [tnwd.uscourts.gov](http://tnwd.uscourts.gov)

The *ECF System* will display a list of party names to match the criteria given or will indicate there is not a match.

If the name of the party you represent appears in the list, click on it and then click the **[Select name from list]** button.

Check the information on the “Party Information” screen shown to ensure that the party’s role for this filing is correct.

If no match is found or if your party does not appear on the “Search for Party” screen shown earlier, click **[Create new party]**. The *ECF System* will display a screen for you to enter party information.

- For a company, enter the entire company name in the “Last name” field. DO NOT use abbreviations or punctuation. Choose the appropriate “Role” from the drop-down list. Click the **[Submit]** button.

- For an individual, enter the individual’s full name. DO NOT use abbreviations or punctuation. Choose the appropriate “Role” from the drop-down list and indicate “yes” or “no” if the party is proceeding *pro se* by clicking on the arrow next to “*Pro se*.” Click the **[Submit]** button.
- Leave all other fields blank.

## b. Linking Documents (Civil/Criminal)

Some documents (*e.g.*, memoranda and responses) should be “linked” to their related documents (*e.g.*, motions) in the case. When filing these and certain other types of documents, you will be presented with the screen shown.

An “event” in the *ECF System* is anything that has been filed in a case. To link the document you are currently filing to a previously-filed document, check the box next to the document you feel should be linked to your document and click on the **[Next]** button.



Because there could be multiple events with similar names, it is imperative that you ensure that you are linking to the correct document. This is another reason the addition of descriptive docket text, *e.g.*, not just “motion to compel” but “motion to compel deposition of Bill Jones,” and descriptions for attachments are so important.

If you are uncertain of the document you are attempting to link, you must have a *PACER* account to preview the document. To proceed without stopping the docketing sequence, follow these steps:

- Right-click on **[Reports]** or **[Query]** from the Attorney Event Menu Bar.
- Left-click on **[Open]** in the new window.
- Proceed with the *PACER* login and obtaining the information desired.
- Switch back to the *ECF Systems* window and proceed to link your filing.

## Query

*Filing Users* should use this feature to query the *ECF System* for specific case information. To enter the “Query” mode, click on the **[Query]** button from the Attorney Event Menu Bar as shown.



The *ECF System* opens the *PACER* login screen. You must enter your *PACER* login and password before the *ECF System* permits you to query the *ECF System* database. Your *PACER* login and password are different from your *ECF System* login and password. You must have a *PACER* account in order to retrieve, view, and print certain documents.

After you enter your *PACER* login and password, the *ECF System* opens a “Query” data entry screen as shown.

You may query by case number, party, attorney, file date, nature of suit, type, etc.

If you know the number that the court has assigned to the case, enter it in the case number field and click on the **[Run Query]** button.

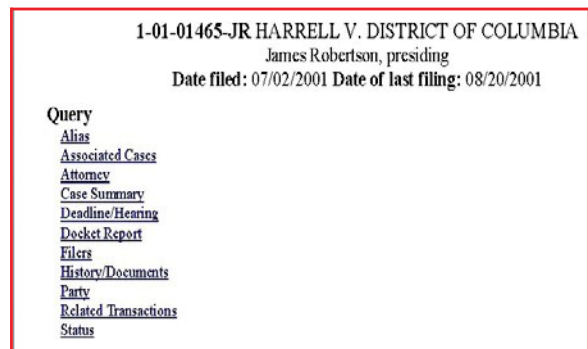
If you query the database for the name of a party or an attorney to a specific case, enter the last name in the appropriate field. If more than one person with the name is in the database, the *ECF System* displays a screen from which to select the correct name, as shown.

After querying the database by case number, name, or nature of suit, the *ECF System* will open the “Query” window for the specific case you selected.



You may also query a case by the nature of suit. You must enter a range for either the filed date or the last entry date in order for the query to run. To search for all cases of a certain type, use the date 1/1/1970. Please note, a search of all cases will take longer to run than a search that is date restricted.

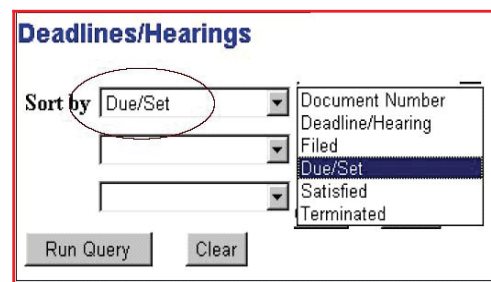
When you run the query, if there is more than one case that meets the criteria, you will get a screen similar to the graphic above which lists multiple case numbers.



At the top of the window as shown, the *ECF System* displays the case number, parties to the case, presiding judge, date that the initial claim was filed, and date of last filing for the case. You may choose specific case information from a large list of query options by clicking on the appropriate options on the screen. The process for selecting and running other queries is similar.

### (1) Deadlines/Hearings

This option provides information on hearings and other deadlines. If you query as illustrated, the *ECF System* opens the “Deadline/Hearings” screen.





After the window opens, if you click on a document number, the *ECF System* will display the actual entry that created the deadline or hearing.

**1-01-01465-JR HARRELL v. DISTRICT OF COLUMBIA**  
James Robertson, presiding  
Date filed: 07/02/2001 Date of last filing: 08/20/2001

**Deadlines/Hearings**

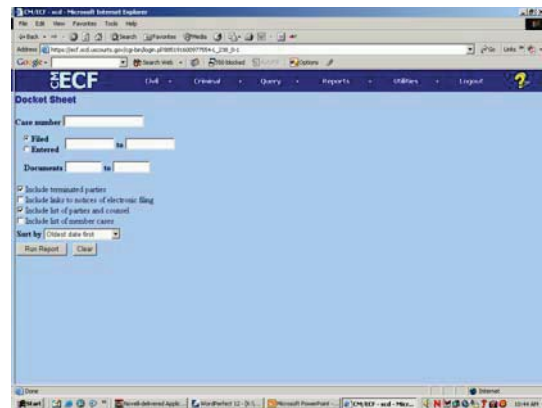
Doc. No.	Deadline/Hearing	Event Filed	Due/Set	Satisfied	Terminated
<a href="#">7</a>	<input type="radio"/> Jury Trial	08/20/2001	07/08/2002 at 09:30 AM		
<a href="#">7</a>	<input type="radio"/> Final Pretrial Conference	08/20/2001	06/27/2002 at 04:30 PM		
<a href="#">7</a>	<input type="radio"/> Status Conference	08/20/2001	01/08/2002 at 04:30 PM		
	<input type="radio"/> Meet & Confer Hearing	07/31/2001	08/08/2001 at 02:00 PM		08/08/2001
<a href="#">1</a>	<input type="radio"/> Answer due from DC	07/02/2001	07/23/2001	08/06/2001	

If you click on the button to the left of the Deadline/Hearing title, ECF will display the docket information and related docketing entries for the hearing that you selected.

## (2) Docket Sheet Report

When you select “Docket Sheet” report, the *ECF System* opens the “Docket Sheet” report screen, as shown.

You may select a date range for your docketing report, as well as a range of docketing numbers. If you leave the range fields blank, the *ECF System* will default to print the entire docket sheet report. Place a checkmark in the box to include links to the *NEF* if you wish to view them from the docket sheet report. After you have selected the parameters for your report, click on the **[Run Report]** button.



The *ECF System* will run your custom docket sheet report and display it. The document numbers are hyperlinks to *PDF* files of the actual documents.

Place your pointer on the silver ball button next to the document number and click to display the *NEF* for the document.

## (3) History/Documents

This selection queries the database for case event history and documents associated with the case. After you click on “History/Documents,” the *ECF System* opens the screen depicted.



You may select the sort order for this report and choose to exhibit all events or only those with documents attached. The *ECF System* also offers you the option to display the docket text in the report.

After making your selections, click on the **[Run Query]** button. The *ECF System* queries the database and builds your report. Here is an example of a portion of a “History/Documents” report.

Date	Dates	Description	Private Event	Type Subtype	Docket Part ID
08/29/2001	08/29/2001	Meet and Confer Statement		meet	34
[Docket Text] MEET AND CONFER STATEMENT (Lawyer Bill)					
08/29/2001	08/29/2001	Scheduling Order		order	36
[Docket Text] SCHEDULING ORDER: Final pretrial conference set for 6/27/2002 at 4:30 PM, jury trial set for 7/9/2002 at 9:30 AM, status conference set for 1/20/2002 at 4:30 PM. Signed by Judge James Robertson on August 20, 2001. (MFL)					
08/29/2001	08/29/2001	Meet and Confer Hearing		order	37
[Docket Text] SCHEDULING ORDER: Final pretrial conference set for 6/27/2002 at 4:30 PM, jury trial set for 7/9/2002 at 9:30 AM, status conference set for 1/20/2002 at 4:30 PM. Signed by Judge James Robertson on August 20, 2001. (MFL)					
08/29/2001	08/29/2001	Meet and Confer Hearing		hearing	32
[Docket Text] Minute Entry Meet and Confer Hearing held on 8/29/2001 before Judge James Robertson in chambers. (Not reported) (inp.)					
07/19/2001	07/19/2001	Calendar Entry		entry	17
[Docket Text] Calendar Entry, Set/Reset Hearings: Meet and Confer Hearing set for 8/8/2001 02:00 PM before Judge James Robertson in chambers. (inp.)					
07/19/2001	07/19/2001	Set/Reset Hearings		entry	18

This particular report lists all the events and documents associated with the case in reverse chronological order. It also displays the docketing text for all docketed events.

#### d. Reports

The **[Reports]** feature of the *ECF System* provides the *Filing User* with several report options. After selecting the **[Reports]** feature from the Attorney Event Menu Bar, the *ECF System* opens the “Reports” screen, as shown in the graphic. You may view court calendar events, docket activity report, and written opinions for a case without logging into *PACER*. Other reports require a *PACER* login.

Following are instructions for docket sheets, docket activity, written opinions, and civil cases. The process for selecting and running other reports is similar.

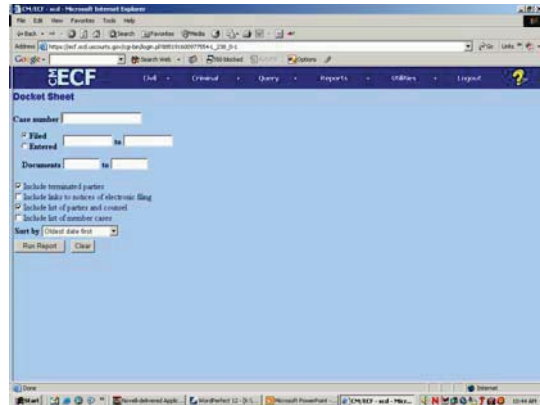




#### (4) Docket Sheet

Click on the **[Docket Sheet]** option. The *ECF System* opens the *PACER* login screen.

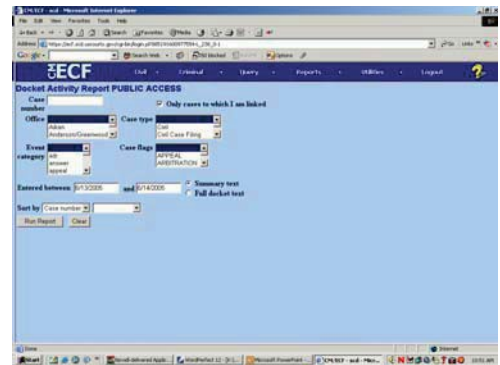
Enter your *PACER* login and password. Click on the **[Login]** button and the *ECF System* will open the “Docket Sheet” report query window.



This is the same query window that the *ECF System* displayed when you selected “Docket Sheet” report from the **[Query]** button. Enter the case number for your docket sheet in the case number field. Select parameters for the remainder of the data entry fields and click on the **[Run Report]** button. The *ECF System* will display a full docket sheet for the case selected.

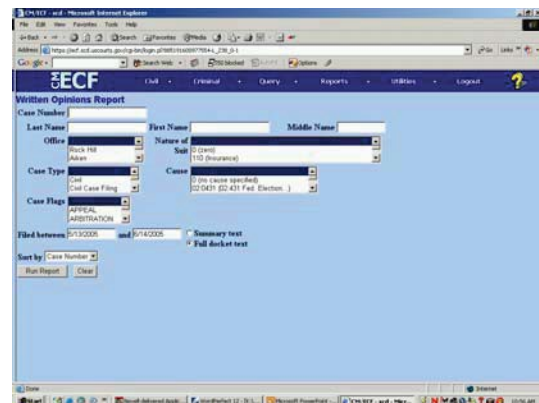
#### Docket Activity Report

This report shows you what event were docketed during a specified period of time. You can select from a variety of criteria. The Activity in My Cases report will allow an attorney to run a daily (one day at a time) transaction of any activity in any of his or her cases. This will help an attorney who feels he or she may have missed an *NEF* on a particular day.



#### (5) Written Opinions Report

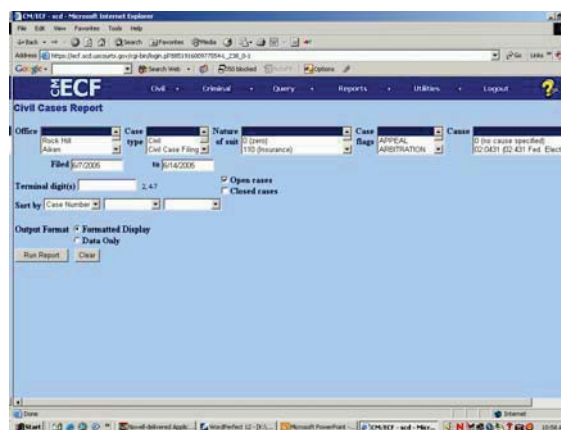
The E-Government Act of 2002 mandated the change that “The courts must make written opinions available in a text-searchable format via the web.” (The judge may use an s/ name or a graphical signature as long as the document is converted in such a way as to maintain text searchability.)



If a PACER user runs a docket report, the user will be charged for the docket report, but if the user clicks on the document number hyperlink for an opinion order, the user will not be charged for viewing the document. If the user clicks on a document number hyperlink for an order which is not an opinion order, the user will be charged for viewing the document.

## (6) Civil Cases Report

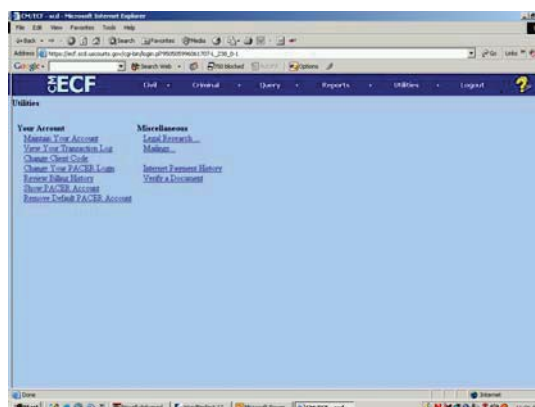
The “Civil Cases Report” provides you with the flexibility to query the *ECF System* database to locate cases electronically filed within a specific date range or by nature of suit and cause code. When you click on “Civil Cases,” the *ECF System* will display the *PACER* login screen. Login to *PACER* and the *ECF System* will open the “Civil Cases Report” screen, as shown.



Enter the range of case filing dates for your report and select a nature of suit or cause code if you wish to narrow your search. If you leave all fields blank, the *ECF System* will display a report for all cases opened in the *ECF System*.

Case Number/ Title	Case Dates	Days Pending	Notes
<a href="#">2:04-cv-00851-CMC</a> Asadounian v. Johns et al	Case filed: 01/12/2005	11	Case: 28 2410 Quiet Title NOS: 894 Energy Allocation Act Office: Charleston Preceder: Cameron McGowan Currie Jury demand: Both
<a href="#">2:04-cv-00852-CMC</a> Asadounian v. Johns et al	Case filed: 01/12/2005	11	Case: 28 2410 Quiet Title NOS: 894 Energy Allocation Act Office: Charleston Preceder: Cameron McGowan Currie Jury demand: Both

The far-left column of the “Civil Cases Report” contains hyperlinked case numbers. If you click on a particular case number, the *ECF System* opens the “Docket Sheet” report window from which you can retrieve the docket sheet for the selected case. Follow the instructions in the previous section for a “Docket Sheet” report.



## e. Utilities Feature

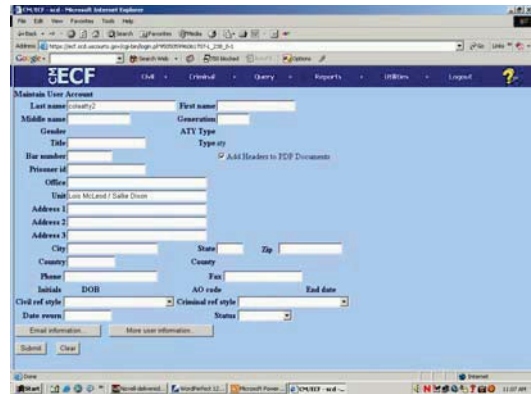
The [Utilities] feature provides the means for the *Filing User* to maintain their account in the *ECF System* and to view all of their *ECF System* transactions.

### (7) Your Account

This section of the [Utilities] feature provides you the capability to maintain certain aspects of your *ECF System* account with the court and to view a log of all your transactions within the *ECF System*.

### (8) Maintain Your Account

Go to the “Maintain Your Account” option to open the “Maintain User Account” information screen.

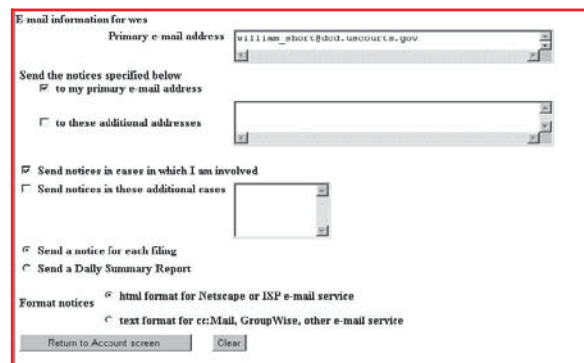


This screen displays all of the registration information that is contained within the *ECF System* database for your account with the court. It is read-only. If you discover any incorrect information that needs to be changed, please notify the court immediately.

Notice the “Add headers to PDF documents” box. E-filed documents do not have the traditional filed stamp; rather, there is an electronic stamp which appears at the top of each page indicating information about the filing, including filed date. If you do not want that header, uncheck that box.

Clicking on the [E-mail information] button opens another screen.

The *ECF System* will e-mail to parties their *NEF* based upon the information entered in this screen. Perform the following steps to enter additional e-mail addresses for individuals that you wish the *ECF System* to notify regarding new case documents.



- Enter a check mark by clicking in the box to the left of the line, which reads “to these additional addresses.”
  - Enter the e-mail addresses of those individuals you wish to notify concerning your cases. You can enter approximately ten (10) e-mail addresses.
- C On this screen, you can indicate that you would like to receive notice in additional cases (in which you are not involved). You would then receive the *NEFs* in those cases; however, your name would not be listed on the *NEF* unless you are an attorney in the case.
- This is also the screen where you choose whether to receive a notice for each filing or a daily summary report. This selection applies to primary e-mail addresses and to all additional addresses.

After updating your account information, click on the **[Return to Account screen]** button to return to your “Maintain User Account” screen.

## (9) Change Password

To edit or view login information about your account, select the **[More User Information]** button, from the “Maintain User Account” screen, as shown.

This screen displays the *Filing User's* login information and provides the means to change your *ECF System* password. Notice that the *ECF System* displays a string of asterisks in the “Password” field.

To change your *ECF System* password, place your cursor in the “Password” field and delete the asterisks. Type in your new password. The *ECF System* displays the actual characters of your new password as you type. When you have completed your interface with the *ECF System* from this screen, click on the **[Return to Account screen]** button to reopen the “Maintain User Account” screen.

NOTE: You should change your password periodically to keep it from being compromised.

When you are satisfied that all of your account information is accurate and up-to-date, click on the **[Submit]** button at the bottom of the “Maintain User Account” screen to submit your changes to the *ECF System*. The *ECF System* will notify you on-screen that your updates were accepted. If you changed passwords, you may begin using the new password during your next *ECF System* session.

NOTE: If you have lost or misplaced your login information, please send an e-mail to [cmecfhelpdesk@tnwd.uscourts.gov](mailto:cmecfhelpdesk@tnwd.uscourts.gov) or call the Help Desk.

## (10) View Your Transaction Log

From the “Utilities” screen, click on the **[View your Transaction Log]** button. The *ECF System* opens a screen with two fields for entering your date selection criteria. Enter the date range for your report and click on the **[Submit]** button. The *ECF System* displays a report of all your transactions in the *ECF System* within the date range you specified for date selection criteria.

Use this feature to review your transactions and to verify that all of the transactions you entered are reflected in the “Transaction Log” and that no unauthorized individuals have entered transactions into the *ECF System* using your login name and password.

Transaction Log			
Report Period: 08/16/2001 - 09/04/2001			
Id	Date	Case Number	Text
3212	08/22/2001 15:45:54	01-4011	First MOTION for Permanent Injunction by ARLENE ACKERMAN. Responses due by 9/4/2001. Replies due by 9/11/2001. (Attachments: # (1) Exhibit Text Document)(wes,)
3326	08/27/2001 11:44:12	01-4011	First MOTION for Preliminary Injunction by ARLENE ACKERMAN. Responses due by 8/30/2001. Replies due by 8/30/2001. (wes,)
3330	08/27/2001 12:01:51	01-4011	RESPONSE in Opposition re [2] filed by DEMITRIA RICE. (wes,)
3331	08/27/2001 12:05:13	01-4011	ORDER temporarily granting Motion for Preliminary Injunction [2]. Motion referred to Shalizi. Signed by Judge rdolan emmett g on 08/29/01. (wes,)
3335	08/27/2001 14:23:52	01-4011	RESPONSE to Motion re [2] Preliminary Injunction filed by DEMITRIA RICE. (Attachments: # (1) Exhibit Exhibits are being held in the Clerk's office in paper format)(wes,)
3336	08/27/2001 14:30:43	01-4011	RESPONSE to Motion re [1] Permanent Injunction filed by ARLENE ACKERMAN. (Attachments: # (1) Exhibit Exhibits are being held in the Clerk's office in paper)(wes,)
3337	08/27/2001 15:49:55	01-4011	Second MOTION for Preliminary Injunction by plaintiff for defendant to cease and desist the assignment of plaintiff to cafeteria duty by ARLENE ACKERMAN. Responses due by 9/31/2001. Replies due by 9/31/2001. (wes,)
3338	08/27/2001 16:18:42	01-4011	MOTION for Preliminary Injunction to cease and desist from assigning plaintiff to work as a cafeteria monitor by DEMITRIA RICE. Responses due by 9/31/2001. Replies due by 9/31/2001. (wes,)
3339	08/28/2001 10:19:15	01-4011	Second MOTION for Preliminary Injunction to cease and desist the assignment of plaintiff to cafeteria monitor by DEMITRIA RICE. Responses due by 9/10/2001. Replies due by 9/14/2001. (wes,)
3431	09/04/2001 14:21:26		Updated person record wes Prod 2231
3431	09/04/2001 14:21:27		Updated user record shortw 2231
Total Number of Transactions: 11			

If you believe or suspect someone is using your login and password without your permission, change your password immediately, then telephone the court's Help Desk as soon as possible.

## (11) Other Features

The *ECF System* provides three miscellaneous functions within the **[Utilities]** option of the system.

- Legal Research
- Mailings
- Verify a Document

When you click on the "Legal Research" option from the "Miscellaneous" screen, the *ECF System* opens a new screen that contains hyperlinks to a law dictionary, a medical dictionary, and legal research resources (Westlaw and Lexis via the Internet). Select the "Verify a Document" option to open a query screen and enter data in the screen fields to locate a particular document attached to a specific case number. There is also a "Mailings" option that opens a new screen for requesting mailing information or labels from the *ECF System*.

## f. Logout



After you have completed all of your transactions for a particular session in the *ECF System*, you should exit the system.

Click on the **[Logout]** option from the *ECF System* Attorney Event Menu Bar. The *ECF System* will log you out of the system and return you to the *ECF System* "Login" screen.

## g. Clearing Cache

Why do I need to clear my cache?

Even though pages on a site may have been updated, you may be viewing old information if your browser's cache (pronounced "cash," a type of electronic memory) is not being cleared as frequently as it should be.

Generally, the first time you enter a Web address, your browser goes to the Internet to get the information you are requesting and temporarily stores it in the cache. When you request information at the same address again, your browser goes to the cache first, rather than directly to the Internet, to retrieve the information. For this reason, the information stored in the cache may be outdated.



We recommend that you set your browser so that the cache is automatically cleared out frequently and your system is always retrieving fresh information directly from the Internet.

Following are instructions for use with the *ECF System's* recommended browsers. If you are using a different version or browser manufacturer, please refer to the appropriate documentation or web site for detailed information they may have provided on this topic.

For Internet Explorer:

1. On the Tools menu of your toolbar, click Internet Options.
2. Click the General tab.
3. In the Browsing History section, click the Delete button.
4. A new window will pop up. Check **only** Temporary Internet Files.
5. Click Delete. The new window will close.
6. Click OK to close Internet Options.

For Mozilla Firefox:

1. On Windows, select Options from the Tools menu.
2. On a Macintosh, select Preferences from the Edit menu.
3. Click the Advanced button.
4. Select the Network tab.
5. In the Cached Web Content section, click the Clear Now button.

For Google Chrome:

1. From the "wrench" menu, select Tools + Clear Browsing Data.
2. Check **only** Empty the Cache.
3. Click the Clear Browsing Data button.

# APPENDIX C

## Guidelines for Professional Courtesy and Conduct





## UNITED STATES DISTRICT COURT

### Attorney Conduct

#### GUIDELINES FOR PROFESSIONAL COURTESY AND CONDUCT

##### Acknowledgments

In 1988, the Board of Directors of the Memphis Bar Association, acting on the theme of "Professionalism" adopted by President Jerome Turner during his tenure in office, appointed a Committee on Professionalism composed of six highly respected lawyers and judges:

-Walter P. Armstrong, Jr., Esquire, former President of the Tennessee Bar Association;

-

Leo Bearman, Jr., Esquire, former President of the Memphis & Shelby County Bar Association and recipient of the Sam A. Myar, Jr. Memorial Award;

-The Honorable Bernice B. Donald, first black female ever appointed to the United States Bankruptcy Court;

-David J. Harris, Esquire, former President of the award-winning Young Lawyers Division of the Memphis & Shelby County Bar Association;

-The Honorable Charles O. McPherson, a judge of the Circuit Court of Tennessee since 1973; and

-John J. Thomason, Esquire, a member of the American College of Trial Lawyers and also recipient of the Sam A. Myar, Jr. Memorial Award.

Their assigned task – to compose a statement of the conduct expected of a true professional by one's fellow lawyers.

These men and Judge Donald brought to this task established reputations for understanding and exemplifying the concept of professionalism; years of experience in dealing with other lawyers and judges on a plane above normal; and a willingness to help engender a concrete recognition that our responsibilities as lawyers do not stop with zealous representation of our clients.

These Guidelines for Professional Courtesy and Conduct are the product of their valued collective judgment and wisdom, and the Memphis Bar Association expresses its deep gratitude for their diligent efforts, many hours of work and their evident understanding and expression of the fact that the practice of law is truly a profession.

##### Introduction

The words that you are about to read and the concepts conveyed by these words are an expression by the lawyers of Memphis and Shelby County, Tennessee, of the level of professional conduct to which they aspire in their everyday practice of a demanding and challenging calling, a career that far transcends the business of making a living.

In these days, however, when the consumer has come to set the pace, when financial demands are ever present, when competition for clients appears pervasive and the legal profession sees itself being dragged along in the grip of change, it does the members of this magnificent profession well to momentarily pause to remember that the success of a lawyer cannot be measured alone by the number of verdicts won, nor by the amount of fees earned, but must take into account the means by which the verdicts are won and the fees are earned.

These guidelines do not attempt to set forth new standards of minimally acceptable conduct, nor to suggest that transgression should subject a lawyer to sanctions beyond the mental or emotional rejection of such transgressions by peers. What these guidelines do attempt is to remind us as lawyers, both young and old, experienced and inexperienced, trial and commercial, that the true value of our profession can be seen in a lawyer's recognition that he or she truly owes broad duties to this legal system itself, duties which render us committed to the continued improvement and success of this nation's effort to afford justice in our civilization – based not on a man's dictates but on laws that apply not just to some, but to all.

Judge Jerome Turner

December 1998

Preamble

A lawyer's duty to each client is to represent that client zealously within the bounds of the law. In striving to fulfill that duty, a lawyer must ever be conscious of the broader duty owed to the legal system which is designed to resolve human and societal problems in a rational and logical manner.

A lawyer owes to the judiciary a duty of candor, honesty, diligence and utmost respect. A lawyer owes to opposing counsel a duty of courtesy, fairness, and cooperation.

A lawyer should strive to achieve higher standards of conduct than those called for by the Code of Professional Responsibility.

A lawyer owes to the administration of justice a duty of personal dignity and professional integrity.

In furtherance of these fundamental concepts, the following Guidelines for Professional Courtesy and Conduct are hereby adopted. These Guidelines are not intended nor should they be construed as establishing any minimum standards of professional care or competence. The sole purpose of adopting these Guidelines is to promote and foster the ideals of professional courtesy, conduct and cooperation set out above.

### I. Courtesy, Civility, and Professionalism

1. A lawyer should treat the opponent, the opposing party, the court and the members of the court staff with courtesy and civility, conducting business in a professional manner at all times.
2. A lawyer has not right, even when called upon by a client to do so, to abuse or to indulge in offensive conduct towards the opposite party. A lawyer should always treat adverse witnesses and parties with fairness and due consideration.
3. While in adversary proceedings, clients are litigants, and while ill feelings may exist between them, such ill feeling(s) should not influence a lawyer's conduct, attitude, or demeanor towards opposing lawyers.
4. A lawyer should do all that is necessary to ensure that clients, the public, and other lawyers respect the judicial system. To this end, a lawyer should:
  - (a) Never knowingly misstate fact or law, regardless of any pressure to do so.
  - (b) Not engage in tactics that complicate or delay matters unnecessarily.
  - (c) Avoid creating unrealistic expectations of a client or the public.
  - (d) Avoid denigrating the legal profession, the court system or adversary counsel.
5. A lawyer should encourage methods and practices which simplify and make less expensive the rendering of legal services.
6. A lawyer should never institute or pursue a legal procedure solely for the lawyer's own profit where there is no reasonable expectation that it will advance or contribute to the best interest of the client.
7. A lawyer should preserve and respect the law by observing all duties to the community and to the Profession. To this end, a lawyer should:
  - (a) Contribute time and expertise to those unable to otherwise afford representation of their interests.
  - (b) Participate in public service and public education activities through personal involvement and financial contributions, and encourage fellow lawyers to do the same.
  - (c) Work to develop among lawyers a strong commitment to the ideals of integrity, honesty, competence, fairness, independence, courage, and dedication to the public interest.
8. A lawyer should recognize the importance of communication with both clients and adversaries. A lawyer should return all telephone calls and respond to all correspondence promptly.
9. A lawyer should never deceive the court or another lawyer.
10. A lawyer should honor promises or commitments made to another lawyer.
11. A lawyer should make every reasonable effort to cooperate with opposing counsel.
12. A lawyer should maintain a cordial and respectful relationship with opposing counsel.
13. A lawyer should seek sanctions against opposing counsel only where required for the protection of the client

or of the legal system and not for mere tactical advantage.

14. A lawyer should not make unfounded accusations of unethical conduct about opposing counsel.
15. A lawyer should never intentionally embarrass another lawyer and should avoid personal criticism of another lawyer.
16. A lawyer should always be punctual.

## II. Professional Conduct in Litigation

1. A lawyer should respect the schedule and commitments of opposing counsel, clients and the courts, thereby promoting the efficient administration of justice and public confidence in our profession. To this end, a lawyer should:

- (a) Consult opposing counsel, when practical, before scheduling hearings and depositions.
- (b) Avoid unnecessary continuances of trials, hearings or depositions.
- (c) Immediately notify opposing counsel and the court of scheduling conflicts.

2. A lawyer should consult opposing counsel in an effort to resolve matters by agreement before filing motions or requesting hearings.

3. A lawyer should refrain from engaging in unnecessary, excessive or abusive discovery. Requests for production of documents should not be excessive or designed solely to place a burden on the opposing party.

4. A lawyer should comply fully with reasonable discovery requests and should not countenance obstructive or evasive tactics. To this end, a lawyer should:

- (a) Exchange information voluntarily, when practical, without formal discovery requests.
  - (b) Upon request, produce all responsive documents, and produce them as they are kept in the ordinary course of business or organize and label them to correspond with the categories in the request.
5. A lawyer should stipulate to matters where they are undisputed or where no genuine basis for objection exists.

6. A lawyer should always contact opposing counsel in an effort to resolve litigation. Since most cases are ultimately settled, initiating such discussions at the outset is recognition of reality, not a sign of weakness.

7. A lawyer should make reasonable efforts to conduct all discovery by agreement.

8. A lawyer should not use any form of discovery, or the scheduling of discovery, as a means of harassing opposing counsel or an opposing party.

9. A lawyer should, when practical, consult with opposing counsel before scheduling hearings and depositions in a good faith attempt to avoid scheduling conflicts.

10. A lawyer should avoid unnecessary delays. To this end, a lawyer should:

- (a) Give notice of cancellation of depositions and hearings to the court and opposing counsel at the earliest possible time.
- (b) Submit any proposed order promptly to opposing counsel and attempt to reconcile any differences before presenting it to the court.
- (c) Respond promptly to any proposed order submitted by opposing counsel.

11. A lawyer drafting a proposed order should reflect in it clearly and accurately the ruling of the court and nothing more.

12. A lawyer should serve copies of all briefs upon opposing counsel at the time that they are filed with the court.

13. A lawyer should not take a default judgment without first giving reasonable notice to opposing counsel or to the opposing party if not represented by counsel of his intention to do so, and should agree to set aside such a default judgment when reasonable cause exists and his client upon his recommendation consents.

14. A lawyer should grant reasonable extensions of time to opposing counsel where such extensions will not have a material adverse effect on the rights of the client.

15. A lawyer should not attempt to obtain an advantage by informal communication with the court.

### III. Professional Conduct in Business and Commercial Practice

1. A lawyer should determine the sophistication, goals and demands of the client before representing the client in a transaction.
2. A lawyer should ascertain and respect the scope of the negotiating authority granted by the client.
3. A lawyer should be guided by the clients' goal in completing a transaction. To this end, a lawyer should:
  - (a) Utilize terms which are clear, concise and practical in drafting documents.
  - (b) Not make an issue of matters of form when revising documents. Pride of authorship, when matters of substance are not involved, only contributes to delay and cost in a transaction.
    1. A lawyer should not seek tactical advantage by delaying negotiations until the last minute. To promote efficiency and fairness a lawyer should, whenever possible, treat the negotiation of a transaction and closing thereof as mutually exclusive activities.
    2. A lawyer should not use the threat of legal proceedings or of the possible effect thereof as a means of obtaining an unjustified advantage for a client.
    3. When a lawyer requires as part of a transaction an opinion letter from another lawyer, it should deal only with the matters requested, any reservations being clearly stated.

# **APPENDIX D.1**

**PLAN FOR ALTERNATIVE DISPUTE  
RESOLUTION  
IN THE  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF  
TENNESSEE**



**PLAN FOR ALTERNATIVE DISPUTE RESOLUTION  
in the  
UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE**

Approved: March 1, 2014  
Effective: September 1, 2014  
Revised: April 1, 2016

**SECTION 1 – INTRODUCTION AND AUTHORITY**

**1.1 TITLE**

This is the Plan for Alternative Dispute Resolution in the United States District Court for the Western District of Tennessee (the “ADR Plan”).

**1.2 PURPOSE AND SCOPE**

- (a) Purpose. The United States District Court for the Western District of Tennessee (the “Court”) adopted this ADR Plan on March 1, 2014 (the “Effective Date”), to make available to civil litigants court-administered ADR interventions and processes designed to provide quicker, less expensive and potentially more satisfying alternatives to continuing litigation, without impairing the quality of justice or the right to trial.
- (b) Scope. This ADR Plan applies to civil actions pending or commenced on and after the Effective Date, except as otherwise indicated herein. The ADR Plan supplements this Court’s Local Rules of Civil Procedure, which shall remain in full effect for all cases.
- (c) Magistrate Judge Consent Cases. In cases where the parties have consented to jurisdiction by a Magistrate Judge under 28 U.S.C. § 636, the Magistrate Judge shall have the same powers as the District Court Judge originally assigned to the case.
- (d) Plan Administration.
  - (1) Staffing. The Court will utilize its current staff to assist in implementation of the ADR Plan.
  - (2) ADR Information and Guidelines. Further information about the ADR Plan is available at <http://www.tnwd.uscourts.gov> and also at the Court Clerk’s office.



## SECTION 2 – OVERVIEW

### 2.1 REFERRAL TO ADR

- (a) New Cases. All civil cases filed on and after the Effective Date of the ADR Plan shall be referred automatically for ADR. Notice of the ADR requirements will be provided to all parties immediately upon the filing of a complaint and answer or a notice of removal. ADR intervention will be scheduled at the Rule 16 scheduling conference. Note: cases assigned to the administrative track and the pro se prisoner track, as defined by LR 16.2(b)(1) and (2), are exempt from automatic ADR referral.
- (b) Pending Cases. The assigned Judge on any pending civil case may, *sua sponte* or at a status conference, issue an order referring the case for ADR. The order shall specify a date by which the ADR intervention is to occur.

A pending case may also be referred for ADR by stipulation of all parties. Stipulations shall be filed and shall designate the specific ADR intervention the parties have selected, the time frame within which the ADR process will be completed and the selected Neutral. Stipulations are presumed acceptable unless the assigned Judge determines that the interests of justice are not served.

### 2.2 RELIEF FROM ADR REFERRAL

- (a) Opting Out Motions. Any party may file, with the assigned Judge for that case, a motion to opt out of, or for relief from, ADR.
- (b) Motion. Opting Out Motions must be made within fourteen (14) days from (i) the date of the Rule 16 scheduling conference in new cases, or (ii) the date of a ADR referral order in pending cases.
- (c) Criteria. Opting Out Motions shall be granted only for good cause shown. Inconvenience, travel costs, attorney fees or other costs shall not constitute good cause. A party seeking relief from ADR must set forth the reasons why ADR has no reasonable chance of being productive.
- (d) Judicial Initiative. The assigned Judge may, *sua sponte*, exempt any case from the Court's ADR Plan.

### 2.3 VIOLATIONS OF THE ADR PLAN

- (a) Report of Violation. A Neutral may report to the assigned Judge any failure to attend an ADR conference or to substantially comply with the ADR Referral Order.
- (b) Proceedings and Sanctions in Response to Report of Violation. Upon receipt of such a report, the Court may take whatever actions it deems appropriate, including issuing an order to show cause why sanctions should not be imposed. Show cause hearings shall be

conducted on the record, but under seal. If sanctions are imposed, objections thereto and any other comment thereon shall be filed with the Court within fourteen (14) days from the date of the notice of sanctions and contemporaneously served on all other counsel, unrepresented parties and the Neutral.

#### **2.4 EVALUATION OF THE ADR PLAN**

The Courts ADR program will be evaluated as needed. Neutrals, counsel and parties shall promptly respond to any request from the Court for an evaluation of the ADR Plan. Responses will be used for research and monitoring purposes only. The sources of specific information will not be disclosed to the assigned Judge or in any report.

## SECTION 3 – NEUTRALS

### 3.1 NEUTRALS

- (a) Neutral Panels. The Court shall maintain panels of Neutrals to serve the various interventions and processes under the ADR Plan. Membership on any panel is a privilege, not a right. The Court shall have the authority to establish qualifications for Neutrals, monitor their performance and withdraw any Neutral from a panel. Applications are available at the Court’s website and from the Clerk’s offices in Memphis and Jackson.
- (b) Private Neutrals. The parties may select a Neutral who is not a member of the Court’s panel. Such selections are presumed acceptable unless the assigned Judge determines that the interests of justice are not served.
- (c) Qualifications and Training. The requirements for panel membership are specific to each intervention and process under the ADR Plan and are set forth in the corresponding sections below.
- (d) Oath. All persons serving as Neutrals shall take the oath or affirmation prescribed in 28 U.S.C. § 453.
- (e) Disqualification and Unavailability of Neutrals.
  - (1) Disqualification. A Neutral may be disqualified for bias or prejudice, pursuant to 28 U.S.C. § 144. A Neutral shall disqualify himself or herself in any case in which a justice, judge or magistrate judge would be disqualified pursuant to 28 U.S.C. § 455, subject to the waiver provision of 42 U.S.C. § 455(e).
  - (2) Notice of Recusal. A Neutral who discovers a circumstance requiring disqualification shall immediately notify all counsel, unrepresented parties and the Court. A new Neutral shall be selected by agreement of the parties or, in the event the parties are unable to agree, by the Court.
  - (3) Objections to Selected Neutral. Prior to the issuance of an Order designating a Neutral, the Court will contact the selected Neutral who will review the case for possible conflicts. Following issuance of the Court’s Order, a party who believes a disqualifying conflict exists should first confer with the Neutral. If the matter is not resolved by, for example, waiver or recusal, a motion and supporting affidavit shall be filed with the Court, within fourteen (14) days from the Court’s Order, stating the facts and the reasons for the belief that a disqualifying conflict, bias or prejudice exists. In the event a conflict or other objection does not become apparent until after the ADR process has commenced, a motion for disqualification must be made at the earliest opportunity or the objection is waived.

- (4) Unavailability. A selected Neutral who later becomes unable to serve within the time period set forth in the Court's Scheduling or Referral Order shall notify all counsel, unrepresented parties and the Court. A new Neutral shall be selected by agreement of the parties or, in the event the parties are unable to agree, by the Court.

### **3.2 IMMUNITIES**

All persons serving as Neutrals in the Court's ADR Plan are performing quasi-judicial functions and are entitled to all the immunities and protections that the law accords to the performance of tasks integrally related to the judicial process, including settlement and alternative dispute resolution. *See, e.g., Mills v. Killebrew*, 765 F.2d 69 (6th Cir. 1985).

### **3.3 COMPENSATION OF NEUTRALS**

A Neutral's fees shall be shared equally by all separately represented parties, unless otherwise agreed by the parties or ordered by the Court.

## SECTION 4 – APPROVED ADR PLAN INTERVENTIONS

### 4.1 ADR INTERVENTIONS

- (a) Options. The cases referred for ADR will proceed to Mediation. The parties, however, may also agree to pursue any further additional ADR options (e.g., arbitration) should they agree to do so.
- (b) Scheduling. The referral of a case to ADR does not delay or defer other dates established in the Scheduling Order and has no effect on the scheduled progress of the case toward trial.

### 4.2 SELECTING AN ADR INTERVENTION

- (a) New Cases. Prior to the Rule 16 scheduling conference, counsel and any unrepresented parties shall confer about ADR as part of their discussion of “the possibilities for a prompt settlement or resolution of the case” pursuant to Fed. R. Civ. P. 26(f). Unless the parties agree to a different intervention (e.g., arbitration), it is presumed that they will participate in mediation. The parties shall attempt to agree upon a Neutral and, at the scheduling conference, shall be prepared to report on the outcome of their ADR discussion. The initial Scheduling Order shall include a deadline for the completion of ADR.
- (b) Pending Cases. In pending cases, all *sua sponte* referrals will be to mediation. Should the parties agree that a different ADR intervention is more appropriate to their case, they may submit a stipulation designating the specific ADR intervention selected, the time frame within which the ADR process will be completed and the identity of the Neutral. Stipulations must be filed within fourteen (14) days from the date of the ADR Referral Order and are presumed acceptable unless the assigned Judge determines that the interests of justice are not served.

### 4.3 MULTIPLE ADR INTERVENTIONS

- (a) Initial Intervention. Generally, a first mediation session will be scheduled within twelve (12) weeks after the Rule 16 scheduling conference. The minimum duration for the first session is two (2) hours, but the parties are encouraged to spend additional time unless the Mediator agrees that additional time would not be productive.
- (b) Additional Interventions. If the initial mediation session is not successful in resolving the case, additional sessions or process will be scheduled as set forth below:
  - (1) By the Mediator. The Mediator will, in consultation with the parties, schedule subsequent sessions as needed to explore and evaluate the possibility of reaching a mutually acceptable resolution. It is anticipated that the parties will engage in at least two mediation sessions. Additional sessions must be conducted within the date for completion of ADR set forth in the Court’s Scheduling or Referral Order.

- (2) By Stipulation. If, after the initial mediation session, the parties agree that an intervention other than mediation may be of benefit in resolving the case, they must submit a stipulation consistent with 4.2(b) and the stipulation will be presumed acceptable unless the assigned Judge determines that the interests of justice are not served.

#### **4.4 CONFIDENTIALITY**

Each of the interventions and processes under this ADR Plan shall be confidential as set forth in the corresponding sections below.

## SECTION 5 – MEDIATION

### 5.1 DESCRIPTION OF MEDIATION AND ITS PROCESS

Mediation, as detailed herein, is a flexible, non-binding, confidential process in which a qualified Neutral, the Mediator, facilitates resolution of the issues between the parties and assists with settlement discussions. Through various methods and techniques, the Mediator seeks to improve communication between the participants (parties, counsel, experts or whoever is included in the mediation); helps participants articulate their interests; helps participants understand the interests of the other participants, including their “opponent;” probes the strengths and weaknesses of each party’s legal positions; and helps generate and define options for a mutually agreeable resolution. The Mediator may engage in “reality checking,” but will not give an overall evaluation of the case unless requested by all the parties. The Mediator has no fact-finding or decision-making authority. The central tenet of mediation is that the parties find their own solutions, with the assistance of the Mediator. A hallmark of mediation is its capacity to go beyond traditional settlement discussions and explore creative outcomes responsive to the participants’ needs and interests. All parties and counsel are expected to participate in mediation in good faith.

### 5.2 QUALIFICATIONS OF MEDIATORS

- (a) Who May Qualify. Mediators may be attorneys or non-attorneys, with relevant experience. All Mediators, except Magistrate Judges, must successfully complete initial and periodic training as required by the Court. All Mediators, except Magistrate Judges, must have a minimum of forty (40) certified hours of training in the discipline of ADR. Non-attorneys must also complete a minimum of four (4) hours of training in federal court civil practice and procedure.

To effectively assist ADR participants and the Court, Mediators must:

- Be knowledgeable about civil litigation in federal court
- Have strong mediation process skills and the temperament to listen effectively and facilitate communication between all participants and across “party” lines
- Exhibit strong problem-solving skills and the ability to generate meaningful options to assist parties and other participants with settlement negotiations

### 5.3 COMPENSATION OF MEDIATORS

- (a) Mediators selected from the Court’s panel shall receive \$250/hour for the first two hours of the initial mediation session and up to two hours of preparation. Thereafter, such mediators can charge the hourly rate agreed upon by the parties. Private Mediators selected pursuant to 5.4(b) are not subject to these compensation rates.

- (b) Mediators may require that counsel and/or parties sign an agreement confirming the terms of retention and compensation.
- (c) Mediator fees shall be divided equally among all separately represented parties, unless otherwise agreed or ordered by the Court.
- (d) At the scheduling conference, a party who has been granted *in forma pauperis* status may apply to the court to be relieved of his or her obligation to pay a *pro rata* share of the Mediator's fee, in whole or in part. While all other parties shall continue to bear their *pro rata* portions of the fee, the court shall enter an order following the scheduling conference addressing whether the *in forma pauperis* party is relieved of their obligation in whole or in part and, if necessary, the source of payment for that portion. When an IFP party has been relieved of his or her obligation to pay a *pro rata* share of the Mediator's Fee, the entire compensation of the Mediator shall be governed by Section 9 of the Pro Se IFP Plan, which "caps" the Mediator's Fees at \$1,000 based on 4 hours at \$250 per hour.
- (e) A party who has not sought *in forma pauperis* status, but is financially unable to pay all or part of the *pro rata* share of the Mediator's fee, may move for a waiver of the fee requirement on a form provided by the Court. When a non-IFP party has been granted a waiver of his or her obligation to pay a *pro rata* share of the Mediator's Fee, the entire compensation of the Mediator shall be governed by Section 9 of the Pro Se IFP Plan, which "caps" the Mediator's Fees at \$1,000 based on 4 hours at \$250 per hour.
- (f) All Mediation Panel members must accept at least one *pro bono case* or one reduced compensation case per year if assigned. Additional *pro bono* service is encouraged.

#### **5.4 SELECTION OF MEDIATOR**

- (a) Mediator Panel List. The Court shall maintain a list of trained Mediators. Each Mediator shall provide to the Court information on his or her area(s) of expertise and compensation rates.
- (b) Private Mediators. The parties may select a Mediator other than from the Court's Mediator list. Such selections are presumed acceptable unless the assigned Judge determines that the interests of justice are not served.
- (c) Selection.
  - (1) The parties shall have until the date of the Rule 16 scheduling conference in which to select a Mediator, confirm the Mediator's availability and file a stipulation regarding their selection. The Clerk shall send a copy of the ADR Scheduling and/or Referral Order to the Mediator.
  - (2) If the parties fail to agree upon a Mediator before or during the Rule 16



scheduling conference, the Court shall select a Mediator for the case from the Court's Mediator list and shall issue an Order notifying the parties of the Mediator's identity.

- (d) Magistrate Judges Serving As Mediators/Neutrals. The assigned Judge may, *sua sponte*, refer the parties to a magistrate judge for judicially conducted ADR. Likewise, the parties, for good cause shown, may move the assigned judge to refer the case to a magistrate judge for judicially conducted ADR.

## **5.5 SCHEDULING AND LOCATION OF MEDIATION**

- (a) Scheduling. Promptly upon being selected, the Mediator shall conduct a telephone conference, jointly or separately, with counsel and any unrepresented parties, to fix the date and place of the mediation.
- (b) Timing. Unless otherwise ordered, a first mediation session shall be conducted within twelve (12) weeks after the Rule 16 scheduling conference. In pending cases, mediation shall be conducted in accordance with the ADR Referral Order.
- (c) Location. The mediation session shall be held in the U.S. Courthouse or the Mediator's office, unless otherwise agreed.

## **5.6 MEDIATION MEMORANDUM**

- (a) Time for Submission. No later than seven (7) days before the scheduled mediation session, each party shall submit to the Mediator a written "Mediation Memorandum."
- (b) Prohibition Against Filing. Mediation Memoranda shall not be filed and the assigned Judge shall not have access to them. They shall be subject to the confidentiality of the mediation process and treated as a document prepared "for settlement purposes only."
- (c) Content of Mediation Memoranda. Mediation Memoranda must not exceed ten (10) double-spaced pages and shall:
  - (1) Identify by name and title or status:
    - (A) All person(s) with factual knowledge and/or settlement authority, who, in addition to counsel, will attend the mediation as a representative(s) of the party; and
    - (B) Any other person(s) (including an insurer representative) whose presence might substantially improve the effectiveness of the mediation or the prospects of settlement;
  - (2) Concisely describe the parties' claims and defenses, addressing the parties' views of the key liability issues and damages, and discussing the key evidence;

- (3) State the relief sought in the case and the basis for monetary calculations;
- (4) Describe the current status of the case, including the status of any motions made;
- (5) Describe the history and current status of settlement negotiations, including offers and counteroffers; and
- (6) Provide any other information that might be pertinent to resolution of the case, including possible settlement options and alternatives.

Parties should include, along with the Mediation Memorandum, copies of documents that are likely to make the mediation more productive or materially advance settlement prospects.

## **5.7 COMMUNICATIONS WITH THE MEDIATOR**

After receiving Mediation Memoranda and submissions pursuant to Section 5.6, the Mediator may request additional information from any party or participant. The Mediator, at his or her discretion, may also discuss the case in confidence and *ex parte* with counsel, parties and/or representatives. The Mediator shall not disclose any confidential communication, including the Mediation Memoranda and submissions, without permission.

## **5.8 ATTENDANCE AND PARTICIPATION**

- (a) Parties. All named parties and their counsel are required to attend the mediation session(s) in person unless excused under 5.8(e) below.
  - (1) Corporation or other entity. A party other than a natural person (*e.g.* a corporation or some other entity or association) satisfies this attendance requirement if represented by one or more persons, other than outside counsel, who have authority to settle and who are knowledgeable about the facts and circumstances of the case and the claims being made.
  - (2) Government entity. A unit or agency of government satisfies this attendance requirement if represented by one or more persons who have, to the greatest extent feasible, authority to settle, and who are knowledgeable about the facts of the case, the agency's or unit's position, and the procedures and policies under which the agency or unit decides whether to enter into proposed settlements. If the action is brought by the government on behalf of one or more individuals, at least one such individual shall also attend.
- (b) Counsel. Each party shall be accompanied at the mediation session by the attorney who will be primarily responsible for handling the trial of the matter and/or is most familiar with the matter at that stage of the proceeding. A party who is proceeding *pro se* may be accompanied by one non-attorney whom the party relies on for support and/or assistance.

- (c) Insurers. Insurer representatives are required to attend in person if their agreement is necessary to achieve a settlement, unless excused under 5.8(e) below.
- (d) Other Attendees. The Mediator may require the attendance of any other individual who appears reasonably necessary for the advancement of communication and resolution between the parties.
- (e) Request to be Excused. Any person who is required to attend a mediation session may be excused from attending in person only after showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. Not less than fourteen (14) days before the date set for the mediation, a person seeking to be excused must submit a letter to the Mediator with copies sent to all other counsel and unrepresented parties, which states:
- (1) All considerations that support the request; and
  - (2) Whether the other party or parties join in or object to the request.

Any party opposing the request shall submit a written statement of opposition no less than seven (7) days prior to the mediation.

The Mediator shall promptly make a determination as to the necessity of the person's attendance and may require personal participation, permit participation by telephone, or excuse the person's presence altogether. The Mediator's decision shall be final.

- (f) Participation by Telephone. A person excused from appearing in person at a mediation session shall be available by telephone or otherwise be available as the Mediator may direct.

## **5.9 THE MEDIATION SESSION**

- (a) The first mediation session shall be a minimum of two (2) hours. The parties may, and are encouraged to, extend the length of the session.
- (b) The mediation session shall be conducted in accordance with the process described in detail by the Mediator during the opening of the mediation. The process may include, as appropriate and necessary, the following:
- Mediator "opening statement" and introduction to the process and session
  - An opportunity to present each party's positions, claims and concerns
  - Joint sessions with all parties participating
  - Various "caucus" sessions in which the Mediator meets with one or more parties and/or their counsel, as the Mediator deems appropriate

- (c) The Mediator shall have discretion to structure the mediation so as to maximize the benefits of the process.
- (d) Any communications to the Mediator during a “caucus” shall not be disclosed by the Mediator to any other party without permission.
- (e) The mediation session shall be informal, and conducted with civility.

## **5.10 CONFIDENTIALITY IN MEDIATION**

- (a) Confidential Treatment. Mediation is confidential and private. No participant in the mediation process or any portion thereof may communicate confidential information acquired during mediation without the consent of the disclosing party. There shall be no stenographic or electronic recording, *e.g.*, audio or visual, of the mediation process.
  - (1) All written and oral communications made in connection with or during the mediation session, any positions taken and any views of the merits of the case formed by any participant, including parties, counsel and the Mediator, are privileged and confidential.
  - (2) There shall be no communication between the assigned Judge or designated Magistrate Judge and the Mediator regarding a case referred for mediation.
  - (3) No communication made in connection with or during any mediation session may be disclosed or used for any purpose including impeachment in any pending or future proceeding in the Court.
  - (4) The confidentiality of information disclosed during mediation does not prohibit or limit:
    - (A) the Court from collecting information relative to evaluation of the ADR program;
    - (B) the Mediator from reporting a failure to attend an ADR conference or to substantially comply with the ADR Referral Order;
    - (C) the Mediator from filing “Mediation Certification” forms pursuant to 5.11;
    - (D) a party from seeking to enforce a settlement agreement;
    - (E) a party from disclosing the final resolution and settlement reached unless, in the interest of justice, the parties have agreed to the confidentiality of same; or
    - (F) a participant from making such disclosures as are required by law.

## **5.11 CONTINUED MEDIATION AND REPORTS**

- (a) At the close of the initial mediation session, the Mediator and the parties shall jointly determine whether it would be appropriate and helpful to then schedule additional mediation. Follow-up could include, without limitation, written reports, telephonic discussions, negotiations between the parties with the Mediator available for assistance, or further mediation sessions.
  
- (b) Within seven (7) days after the close of each mediation session, and on the form “Mediation Certification” provided by the Court, the Mediator shall report to the Court the date the session was held, whether the case settled in whole or in part and whether any follow up is scheduled. The Mediation Certification shall be filed.

# **APPENDIX D.2**

## **MEDIATION PLAN FOR PRO SE CIVIL CASES WITH PARTIES GRANTED IN FORMA PAUPERIS STATUS**

**IN THE  
UNITED STATES DISTRICT COURT  
FOR THE  
WESTERN DISTRICT OF TENNESSEE**



# UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TENNESSEE

## Mediation Plan for Pro Se Civil Cases with Parties Granted In Forma Pauperis Status

Effective September 1, 2014  
*Revised May 2015*

### 1. INTRODUCTION

The United States District Court for the Western District of Tennessee (“Court”) has adopted this “Mediation Plan for Pro Se Civil Cases with Parties Granted In Forma Pauperis Status” (hereinafter referred to as the “IFP Mediation Plan” or within this document as the “Plan”), which governs the mediation of civil cases in which one or more litigants are Pro Se or unrepresented parties who have been granted In Forma Pauperis (“IFP”) status by the Court. Portions of the Court’s ADR Plan may be incorporated by reference into this Plan, but in the event that provisions set forth herein conflict with provisions in the ADR Plan, the provisions set forth herein prevail as to Pro Se IFP mediations. Additional information about the Plan can be found at the Court’s website (<http://www.tnwd.uscourts.gov>) or at the Clerk of Court’s Office.

### 2. PURPOSE AND OVERVIEW OF MEDIATION

The purpose the Plan is to provide Pro Se IFP parties with a court-administered dispute resolution process offering quicker, less expensive and simpler alternatives to continued litigation. Mediation is a flexible, non-binding, confidential process in which a qualified Mediator facilitates resolution of the issues between the parties and assists with settlement discussions. Mediators are trained and qualified to: seek to improve communication between the participants; help participants explain their interests; assist participants in understanding the interests of the other participants; probe the strengths and weaknesses of each party’s legal positions; and help generate and define options for a mutually agreeable resolution. The Mediator has no fact-finding or decision-making authority and unless requested by all the parties will not give an overall evaluation of the case.

### 3. APPLICATION AND ADMINISTRATION

This Plan is applicable to all civil cases with Pro Se IFP parties, including cases in which District Judges or Magistrate Judges are presiding. This Plan will be administered by the Clerk of Court’s Office in regard to formulation, implementation, general administration, the assignment of Mediators, the payment of mediation fees, and statistical reporting. All *new civil*

*cases* with Pro Se IFP parties shall be automatically assigned to mediation at the Rule 16 Scheduling Conference unless they are (a) cases being processed on the Administrative Track or (b) Pro Se Prisoner cases. *Pending civil cases* with Pro Se IFP parties may also be assigned to mediation by the Court at any time. Pending civil cases with Pro Se IFP parties cannot be referred to mediation by joint stipulation, even if all parties agree thereto, without a signed court order approving the referral.

#### **4. BEING EXCUSED FROM OR “OPTING OUT OF” MEDIATION**

Any party in a Pro Se IFP civil case may file with the Court a motion to be excused from (opting out of) the mediation process. Such motions must be filed within fourteen (14) days following the Rule 16 Scheduling Conference in newly filed cases or within fourteen (14) days following the date of the mediation referral order in pending cases. In order to successfully opt out of mediation, the party filing an opt out motion must demonstrate to the Court that there are good reasons for not requiring mediation and that the mediation process has no reasonable chance of being successful.

#### **5. COMPLYING WITH MEDIATION REQUIREMENTS**

All parties and counsel are expected to participate in mediation in good faith. Once ordered by the Court and if no opt out motion has been granted, it is mandatory for all parties to comply with mediation orders and requests issued by the Court and/or the Mediator. A party's failure to comply will be reported to the Court and sanctions, including financial penalties or dismissal of the lawsuit, may be imposed on the noncomplying party. As there is a deadline to challenge or respond to such sanctions, any Pro Se IFP party sanctioned by the Court should contact the Clerk of Court's Office for additional information related to appealing such sanctions.

#### **6. APPOINTMENT OF MEDIATORS**

The Court maintains a Mediation Panel (“Panel”) from which Mediators are selected by the Clerk of Court's Office to serve in Pro Se IFP civil cases. The qualifications and appointment of individuals to serve as Panel members is set forth in §5 of the Court's ADR Plan. The selection process is randomized and is conducted in accordance with policies and procedures approved by the Court, and it has been structured so that every Mediator serves in roughly the same number of cases. In regard to Pro Se IFP civil cases, no private Mediators will be used; only Panel members are eligible for appointment to a Pro Se IFP civil case. Further, even if all parties agree that a particular Mediator would be desirable, case assignments are conducted solely through the Clerk of Court's automated selection process.



## 7. CHANGING MEDIATORS

Assigned Mediators may be disqualified for bias and prejudice in regard to issues and/or parties in a case. A Mediator may, at any point in a case, remove himself or herself upon recognizing an inability to administer mediation in a fair and impartial manner or if the Mediator recognizes a conflict of interest in the assigned case. Aside from this sort of self-imposed removal, any party who believes that the assigned Mediator has a conflict of interest or exhibits bias or prejudice in a case may file a motion requesting removal of the Mediator. This motion must be filed within fourteen (14) days after the Mediator was assigned and must contain adequate documentation describing the alleged conflict of interest or exhibited bias or prejudice. If the evidence of a Mediator's conflict of interest, bias or prejudice surfaces at a later stage of the proceedings, the complaining party must file a motion to remove the Mediator as soon as the basis therefor materializes. Prior to filing any motion, a party desiring a change in Mediators must first contact the Mediator in order to raise this issue directly. A Mediator, if he or she concurs with the concern being raised, can elect to remove himself or herself in which case a motion is not needed. If the Mediator, however, declines to withdraw from the case a party still desiring to change Mediators would have to file the appropriate motion with the Court. The above removal process applies to newly filed cases as well as pending cases.

## 8. IMMUNITIES

Mediators in Pro Se IFP civil cases are entitled to the same immunities set forth in §3.2 of the Court's ADR Plan.

## 9. COMPENSATION OF MEDIATORS (PRO SE IFP CIVIL CASES ONLY)

The cost of mediation shall be shared equally by each of the parties in the case, including Pro Se IFP parties, unless otherwise ordered by the court. Mediators selected from the Court's Panel shall be compensated at the rate of \$250.00 per hour. Pro Se IFP civil case mediations are "capped" at four (4) hours of compensated time, including both the time needed for preparing as well as the time needed for conducting mediation. Mediators may motion the Court for both extended mediation sessions as well as for additional mediation sessions as set forth in §11 below. If a Mediator exceeds the 4-hour limitation or whatever additional time is authorized by the Court in either preparing for or conducting mediation, it will be treated as having been provided by the Mediator on a *pro bono* basis. Mediators in Pro Se IFP civil cases shall not require that counsel and/or parties sign an agreement confirming the terms of retention and compensation since compensation terms are set forth in this Plan.

At the Rule 16 Scheduling Conference, a Pro Se party who has been granted IFP status may apply to the Court to be relieved of the obligation to pay his, her or their *pro rata* share of the Mediator's fee. Approval of such request shall be based on a Pro Se party's financial condition at that time. While all other parties shall continue to bear their *pro rata* portions of the Mediator's fee, the Court shall enter an order following the Scheduling Conference indicating that Pro Se IFP parties have been relieved of the obligation to pay their share of the Mediator's

fee and that their share shall be paid by the Clerk of Court from the Court's Pro Bono Expense Fund.

## **10. MEDIATION IS THE EXCLUSIVE FORM OF INTERVENTION**

While there are several forms of alternative dispute resolution techniques, mediation is the only approved intervention in Pro Se IFP civil cases. The parties in these cases have no option to pursue alternative resolution processes even if they are in agreement as to a particular alternative.

## **11. MEDIATION SESSIONS: DURATION AND ADDITIONAL SESSIONS**

The initial mediation session should be held within twelve (12) weeks following the Rule 16 Scheduling Conference. Pro Se IFP mediation sessions (excluding the Mediator's preparation time) are expected to last two (2) hours on average though some will be concluded earlier and some might last longer. Mediation sessions exceeding two hours will require prior approval of the Court pursuant to a written motion by the Mediator requesting an extended time frame unless the Mediator is providing the extended time on a *pro bono* basis. Likewise, additional mediation sessions beyond the initial one will require prior approval of the Court pursuant to a written motion by the Mediator requesting additional mediation sessions unless the Mediator is providing additional mediation sessions on a *pro bono* basis. Motions for extended or additional sessions must be supported by written memoranda demonstrating good cause for approving supplemental services.

## **12. CONFIDENTIALITY**

All meetings, proceedings and materials, if any, submitted to a Mediator under this Plan shall be treated as a confidential communication.

## **13. OVERVIEW OF THE MEDIATION PROCESS**

### **A. MEDIATION MEMORANDUM (*PRIOR TO MEDIATION SESSION*)**

Unless the Mediator specifically instructs the mediation parties otherwise, no later than seven (7) days before the initial scheduled mediation session, each party shall submit to the Mediator a written "Mediation Memorandum." Mediation Memoranda shall not be filed in the case docket and the assigned Judge shall not have access to them. As stated in §12 above, they shall be subject to the confidentiality of the mediation process and treated as a document prepared "for settlement purposes only." Parties should include, along with the Mediation Memorandum, copies of documents that are likely to make the mediation more productive or materially advance settlement prospects. Mediation Memoranda must not exceed ten (10) double-spaced pages and shall contain the following information:

- \* Identify by name all person(s) with factual knowledge and/or settlement authority, who, in addition to counsel, will attend the mediation as a representative(s) of the party;
- \* Concisely describe the parties' claims and defenses, addressing the parties' views of the key liability issues and damages, and discussing the key evidence;
- \* State the relief sought in the case and the basis for monetary calculations;
- \* Describe the current status of the case, including the status of any motions made;
- \* Describe the history and current status of settlement negotiations, if any, including offers and counteroffers; and
- \* Provide any other information that might be pertinent to resolution of the case, including possible settlement options and alternatives.

In recognition of the fact that the content outlined above might be too complex for pro se parties to provide, Mediators have the authority to set the requirements for these Memoranda on a case-by-case basis.

## **B. COMMUNICATIONS WITH THE MEDIATOR**

After receiving the Mediation Memoranda, the Mediator may request additional information from any party or participant. The Mediator, at his or her discretion, may also discuss the case in confidence and *ex parte* (meaning that discussions can be conducted with one party without any other party being present) with counsel, parties and/or representatives. The Mediator shall not disclose any confidential communication, including the Mediation Memoranda and submissions, without prior permission from the party making such disclosures.

## **C. ATTENDANCE AND PARTICIPATION**

### **1. Persons Required To Attend Mediation Sessions**

All named parties and their counsel, if any, are required to attend mediation session(s) in person unless excused by the Mediator. Government agencies, corporations and other business entities satisfy the attendance requirement if represented by one or more persons, other than outside counsel, who have authority to settle and who are knowledgeable about the facts and circumstances of the case and the claims being made. Parties shall be accompanied at the mediation session by the attorney who will be primarily responsible for handling the trial of the matter and/or is most familiar with the matter at that stage of the proceeding. Pro Se IFP parties may, but are not required to, be accompanied by one non-attorney whom the party relies on for support and/or assistance. The Mediator may require the attendance of any other individual or representative, such as an insurance company agent, who appears reasonably necessary for the advancement of communication and resolution between the parties.

## **2. Requesting To Be Excused From Mediation Sessions**

Any person who is required to attend a mediation session may be excused from attending in person only after showing that personal attendance would impose an extraordinary or otherwise unjustifiable hardship. Not less than fourteen (14) days before the date set for the mediation, a person seeking to be excused must submit a letter to the Mediator with copies sent to all other counsel and unrepresented parties explaining the necessity for being excused. The Mediator shall promptly make a determination as to the necessity of the person's attendance and may thereafter require personal participation, permit participation by telephone, or excuse the person's presence altogether. The Mediator's decision shall be final.

### **D. THE MEDIATION SESSION**

As previously noted, the mediation session for Pro Se IFP civil cases shall be two (2) hours in duration unless otherwise approved by the court. The Mediator shall have discretion to structure the mediation so as to maximize the benefits of the process. The mediation session shall be informal, and conducted with civility, and as also previously noted mediation is confidential and private. No participant in the mediation process or any portion thereof may communicate confidential information acquired during mediation without the consent of the disclosing party, and there shall be no stenographic or electronic audio or visual recording of the mediation process. The confidentiality of information disclosed during mediation does not, however, prohibit or limit: the Court from collecting information relative to evaluation of the Mediation program; the Mediator from reporting a failure to attend mediation sessions or comply with applicable court orders; the Mediator from filing any mediation reports or forms; a party from seeking to enforce a settlement agreement; a party from disclosing the final resolution and settlement reached unless, in the interest of justice, the parties have agreed to the confidentiality of same; or any participant from making such disclosures as are required by law.

### **E. MEDIATION FORMS AND REPORTS (AFTER MEDIATION SESSION)**

At the close of the initial mediation session, the Mediator and the parties shall jointly determine whether it would be appropriate and helpful to request the Court to provide additional mediation sessions. Within seven (7) days after the close of each mediation session, and on the "Mediation Certification" form provided by the Court, the Mediator shall report to the Court the date the mediation session was held, whether the case settled in whole or in part and whether any additional sessions are recommended and if so, the reasons. If such additional sessions are recommended the motions referred to in §11 above should be filed with the court. The "Mediation Certification" shall be filed under seal in the case docket.

# APPENDIX E

LR 16.2 Track 1  
(Administrative)  
Scheduling Order

**APPENDIX E**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE**

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<hr/>	)	
	)	
Plaintiff(s),	)	
	)	
v.	)	Case : x:xx-cv-xxxxx-XXX-xxx
	)	
<hr/>	)	
	)	
Defendant(s).	)	

---

**ADMINISTRATIVE TRACK SCHEDULING ORDER**

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Pursuant to Local Rule 16.2, the following dates are established as the final deadlines for:

**FILING OF THE RECORD:** [insert date 30 days after the appearance of the first defendant]

**FILING OF MOTIONS OR BRIEFS:** [insert date 90 days after entry of this scheduling order]

**OTHER RELEVANT MATTERS:**

Due to the nature of this case, it is not anticipated that discovery will be necessary. Any party anticipating that discovery will, in fact, be necessary should promptly file a motion to request a scheduling conference.

This case is set for a [jury]/ [non-jury] trial. The pretrial order deadline, pretrial conference date, and trial date will be set by separate order. However, due to the nature of this case, it is not anticipated that a trial will be necessary. Any party anticipating that a trial will, in fact, be necessary should promptly file a motion to request a scheduling conference.

Pursuant to Local Rule 7.2(a)(1)(A), all motions, except motions pursuant to Fed. R. Civ. P. 12, 56, 59, and 60, shall be accompanied by a proposed order in a word processing format sent to the ECF mailbox of the presiding Judge.

Pursuant to Local Rule 7.2(a)(1)(B), the parties are required to consult prior to filing any motion (except motions filed pursuant to Fed. R. Civ. P. 12, 56, 59, and 60).

The opposing party must file a response to any opposed motion. Pursuant to Local Rule

7.2(a)(2), a party's failure to respond timely to any motion, other than one requesting dismissal of a claim or action, may be deemed good grounds for granting the motion.

Neither party may file an additional reply to any motion, other than a motion filed pursuant to Fed. R. Civ. P. 12(b) or 56. As provided by Local Rule 7.2(c), if a party believes that a reply is necessary, it shall file a motion for leave to file a reply accompanied by a memorandum setting forth the reasons for which a reply is required within seven days of service of the response. Pursuant to Local Rules 12.1(c) and 56.1(c), a party moving for summary judgment or to dismiss may file a reply within 14 days after being served with the response in opposition to the motion.

The parties [do] / [do not] consent to trial before the Magistrate Judge.

Absent good cause shown, the deadlines set by this order will not be modified or extended.

IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

THOMAS M. GOULD  
CLERK OF COURT

ENTERED BY:

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Deputy Clerk

# **APPENDIX F**

LR 16.2 Track 2  
(Pro Se Prisoner)  
Scheduling Order





Pursuant to Local Rule 7.2(a)(1)(A), all motions, except motions pursuant to Fed. R. Civ. P. 12, 56, 59, and 60, shall be accompanied by a proposed order in a word processing format sent to the ECF mailbox of the presiding Judge.

The opposing party must file a response to any opposed motion. Pursuant to Local Rule 7.2(a)(2), a party's failure to respond timely to any motion, other than one requesting dismissal of a claim or action, may be deemed good grounds for granting the motion.

Neither party may file an additional reply to any motion, other than a motion filed pursuant to Fed. R. Civ. P. 12(b) or 56. As provided by Local Rule 7.2(c), if a party believes that a reply is necessary, it shall file a motion for leave to file a reply accompanied by a memorandum setting forth the reasons for which a reply is required within seven days of service of the response. Pursuant to Local Rules 12.1(c) and 56.1(c), a party moving for summary judgment or to dismiss may file a reply within 14 days after being served with the response in opposition to the motion.

Absent good cause shown, the deadlines set by this order will not be modified or extended.

IT IS SO ORDERED.

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UNITED STATES MAGISTRATE JUDGE

# APPENDIX G

LR 16.2 Track 3  
(Expedited)  
Scheduling Order



**EXPERT WITNESS DISCLOSURES PURSUANT TO FED. R. CIV. P. 26(a)(2):**

- (a) **DISCLOSURE OF PLAINTIFF’S (OR PARTY WITH BURDEN OF PROOF) RULE 26(a)(2) EXPERT INFORMATION:** [insert date 30 days before the deadline for completing all discovery]
- (b) **DISCLOSURE OF DEFENDANT’S (OR OPPOSING PARTY) RULE 26(a)(2) EXPERT INFORMATION:** [insert date 15 days before the deadline for completing all discovery]
- (c) **EXPERT WITNESS DEPOSITIONS:** [insert the deadline for completing all discovery]

**MOTIONS TO EXCLUDE EXPERTS UNDER F.R.E. 702/DAUBERT MOTIONS:**  
[insert date 15 days after the deadline for completing all discovery]

**FILING DISPOSITIVE MOTIONS:** [insert date 30 days after the deadline for completing all discovery]

**OTHER RELEVANT MATTERS:**

As required by Local Rule 26.1(e), the parties have conferred as to whether they will seek discovery of electronically stored information (“e-discovery”) and [have agreed that e-discovery is not appropriate in this case and therefore they will not seek e-discovery] / [have reached an agreement regarding e-discovery and hereby submit the parties’ e-discovery plan for the Court’s approval] / [have not reached an agreement regarding e-discovery and will comply with the default standards described in Local Rule 26.1(e) until such time, if ever, the parties reach an agreement and the Court approves the parties’ e-discovery plan].

[Pursuant to agreement of the parties, if privileged or protected information is inadvertently produced, the producing party may, by timely notice, assert the privilege or protection and obtain the return of the materials without waiver.]

No depositions may be scheduled to occur after the discovery deadline. All motions, discovery requests, or other filings that require a response must be filed sufficiently in advance of the discovery deadline to enable the opposing party to respond by the time permitted by the Rules prior to that date.

Motions to compel discovery are to be filed and served by the discovery deadline or within 30 days of the default or the service of the response, answer, or objection that is the subject of the motion, if the default or the service of the response, answer, or objection occurs within 30 days of the discovery deadline, unless the time for filing of such motion is extended for good cause shown, or the objection to the default, response, answer, or objection is waived.

This case is set for a [jury] / [non-jury] trial. The pretrial order deadline, pretrial conference date, and trial date will be set by separate Order. The parties anticipate the trial will last approximately [insert number] days.

The parties are ordered to engage in ADR before the close of discovery. Under ADR Rule 5.11(b) the mediator is to file a Mediation Certification within seven (7) days after the close of the mediation session reporting the date of the session, whether the case settled as a whole or in part and whether any follow up is scheduled. And under Local Rule 16.3(d), within seven (7) days after the mediator submits the Mediation Certification, the parties shall file a notice confirming that ADR was conducted and indicating whether it was successful or unsuccessful, without disclosing the parties' respective positions.

Pursuant to Local Rule 7.2(a)(1)(A), all motions, except motions pursuant to Fed. R. Civ. P. 12, 56, 59, and 60, shall be accompanied by a proposed order in a word processing format sent to the ECF mailbox of the presiding judge.

Pursuant to Local Rule 7.2(a)(1)(B), the parties are required to consult prior to filing any motion (except motions filed pursuant to Fed. R. Civ. P. 12, 56, 59, and 60).

The opposing party must file a response to any opposed motion. Pursuant to Local Rule 7.2(a)(2), a party's failure to respond timely to any motion, other than one requesting dismissal of a claim or action, may be deemed good grounds for granting the motion.

Neither party may file an additional reply to any motion, other than a motion filed pursuant to Fed. R. Civ. P. 12(b) or 56. As provided by Local Rule 7.2(c), if a party believes that a reply is necessary, it shall file a motion for leave to file a reply accompanied by a memorandum setting forth the reasons for which a reply is required within seven days of service of the response. Pursuant to Local Rules 12.1(c) and 56.1(c), a party moving for summary judgment or to dismiss may file a reply within 14 days after being served with the response in opposition to the motion.

The parties [do] / [do not] consent to trial before the Magistrate Judge.

This order has been entered after consultation with the parties. Absent good cause shown, the deadlines set by this order will not be modified or extended.

IT IS SO ORDERED.

---

PRESIDING UNITED STATES JUDGE

# APPENDIX H

LR 16.2 Track 4  
(Standard)  
Scheduling Order





- (a) **DISCLOSURE OF PLAINTIFF’S (OR PARTY WITH BURDEN OF PROOF) RULE 26(a)(2) EXPERT INFORMATION:** [insert date 60 days before the deadline for completing all discovery]
- (b) **DISCLOSURE OF DEFENDANT’S (OR OPPOSING PARTY) RULE 26(a)(2) EXPERT INFORMATION:** [insert date 30 days before the deadline for completing all discovery]
- (c) **EXPERT WITNESS DEPOSITIONS:** [insert the deadline for completing all discovery]

**MOTIONS TO EXCLUDE EXPERTS UNDER F.R.E. 702/DAUBERT MOTIONS:**

[insert date 15 days after the deadline for completing all discovery]

**SUPPLEMENTATION UNDER RULE 26(e)(2):** [insert the deadline for completing all discovery]

**FILING DISPOSITIVE MOTIONS:** [insert date 30 days after the deadline for completing all discovery]

**OTHER RELEVANT MATTERS:**

As required by Local Rule 26.1(e), the parties have conferred as to whether they will seek discovery of electronically stored information (“e-discovery”) and [have agreed that e-discovery is not appropriate in this case and therefore they will not seek e-discovery] / [have reached an agreement regarding e-discovery and hereby submit the parties’ e-discovery plan for the Court’s approval] / [have not reached an agreement regarding e-discovery and will comply with the default standards described in Local Rule 26.1(e) until such time, if ever, the parties reach an agreement and the Court approves the parties’ e-discovery plan].

[Pursuant to agreement of the parties, if privileged or protected information is inadvertently produced, the producing party may, by timely notice, assert the privilege or protection and obtain the return of the materials without waiver.]

No depositions may be scheduled to occur after the discovery deadline. All motions, discovery requests, or other filings that require a response must be filed sufficiently in advance of the discovery deadline to enable the opposing party to respond by the time permitted by the Rules prior to that date.

Motions to compel discovery are to be filed and served by the discovery deadline or within 30 days of the default or the service of the response, answer, or objection that is the subject of the motion, if the default or the service of the response, answer, or objection occurs within 30 days of the discovery deadline, unless the time for filing of such motion is extended for good cause shown, or the objection to the default, response, answer, or objection is waived.

This case is set for a [jury] / [non-jury] trial. The pretrial order deadline, pretrial conference date, and trial date will be set by separate Order. The parties anticipate the trial will last approximately [insert number] days.

The parties are ordered to engage in ADR before the close of discovery. Under ADR Rule 5.11(b) the mediator is to file a Mediation Certification within seven (7) days after the close of the mediation session reporting the date of the session, whether the case settled as a whole or in part and whether any follow up is scheduled. And under Local Rule 16.3(d), within seven (7) days after the mediator submits the Mediation Certification, the parties shall file a notice confirming that ADR was conducted and indicating whether it was successful or unsuccessful, without disclosing the parties' respective positions.

Pursuant to Local Rule 7.2(a)(1)(A), all motions, except motions pursuant to Fed. R. Civ. P. 12, 56, 59, and 60, shall be accompanied by a proposed order in a word processing format sent to the ECF mailbox of the presiding judge.

Pursuant to Local Rule 7.2(a)(1)(B), the parties are required to consult prior to filing any motion (except motions filed pursuant to Fed. R. Civ. P. 12, 56, 59, and 60).

The opposing party must file a response to any opposed motion. Pursuant to Local Rule 7.2(a)(2), a party's failure to respond timely to any motion, other than one requesting dismissal of a claim or action, may be deemed good grounds for granting the motion.

Neither party may file an additional reply to any motion, other than a motion filed pursuant to Fed. R. Civ. P. 12(b) or 56. As provided by Local Rule 7.2(c), if a party believes that a reply is necessary, it shall file a motion for leave to file a reply accompanied by a memorandum setting forth the reasons for which a reply is required within seven days of service of the response. Pursuant to Local Rules 12.1(c) and 56.1(c), a party moving for summary judgment or to dismiss may file a reply within 14 days after being served with the response in opposition to the motion.

The parties [do] / [do not] consent to trial before the Magistrate Judge.

This order has been entered after consultation with the parties. Absent good cause shown, the deadlines set by this order will not be modified or extended.

IT IS SO ORDERED.

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PRESIDING UNITED STATES JUDGE

# APPENDIX I

LR 16.2 Track 5  
(Complex)  
Scheduling Order



**(c) EXPERT WITNESS DEPOSITIONS:** [insert date]

**MOTIONS TO EXCLUDE EXPERTS UNDER F.R.E. 702/DAUBERT MOTIONS:**  
[insert date]

**SUPPLEMENTATION UNDER RULE 26(e)(2):** [insert date]

**FILING DISPOSITIVE MOTIONS:** [insert date]

**OTHER RELEVANT MATTERS:**

As required by Local Rule 26.1(e), the parties have conferred as to whether they will seek discovery of electronically stored information (“e-discovery”) and [have agreed that e-discovery is not appropriate in this case and therefore they will not seek e-discovery] / [have reached an agreement regarding e-discovery and hereby submit the parties’ e-discovery plan for the Court’s approval] / [have not reached an agreement regarding e-discovery and will comply with the default standards described in Local Rule 26.1(e) until such time, if ever, the parties reach an agreement and the Court approves the parties’ e-discovery plan].

[Pursuant to agreement of the parties, if privileged or protected information is inadvertently produced, the producing party may, by timely notice, assert the privilege or protection and obtain the return of the materials without waiver.]

No depositions may be scheduled to occur after the discovery deadline. All motions, discovery requests, or other filings that require a response must be filed sufficiently in advance of the discovery deadline to enable the opposing party to respond by the time permitted by the Rules prior to that date.

Motions to compel discovery are to be filed and served by the discovery deadline or within 30 days of the default or the service of the response, answer, or objection that is the subject of the motion, if the default or the service of the response, answer, or objection occurs within 30 days of the discovery deadline, unless the time for filing of such motion is extended for good cause shown, or the objection to the default, response, answer, or objection is waived.

This case is set for a [jury] / [non-jury] trial. The pretrial order deadline, pretrial conference date, and trial date will be set by separate Order. The parties anticipate the trial will last approximately [insert number] days.

The parties are ordered to engage in ADR before the close of discovery. Under ADR Rule 5.11(b) the mediator is to file a Mediation Certification within seven (7) days after the close of the mediation session reporting the date of the session, whether the case settled as a whole or in part and whether any follow up is scheduled. And under Local Rule 16.3(d), within seven (7) days after the mediator submits the Mediation Certification, the parties shall file a notice confirming that ADR was conducted and indicating whether it was successful or unsuccessful, without disclosing the parties’ respective positions.

Pursuant to Local Rule 7.2(a)(1)(A), all motions, except motions pursuant to Fed. R. Civ. P. 12, 56, 59, and 60, shall be accompanied by a proposed order in a word processing format sent to the ECF mailbox of the presiding judge.

Pursuant to Local Rule 7.2(a)(1)(B), the parties are required to consult prior to filing any motion (except motions filed pursuant to Fed. R. Civ. P. 12, 56, 59, and 60).

The opposing party must file a response to any opposed motion. Pursuant to Local Rule 7.2(a)(2), a party's failure to respond timely to any motion, other than one requesting dismissal of a claim or action, may be deemed good grounds for granting the motion.

Neither party may file an additional reply to any motion, other than a motion filed pursuant to Fed. R. Civ. P. 12(b) or 56. As provided by Local Rule 7.2(c), if a party believes that a reply is necessary, it shall file a motion for leave to file a reply accompanied by a memorandum setting forth the reasons for which a reply is required within seven days of service of the response. Pursuant to Local Rules 12.1(c) and 56.1(c), a party moving for summary judgment or to dismiss may file a reply within 14 days after being served with the response in opposition to the motion.

The parties [do] / [do not] consent to trial before the Magistrate Judge.

This order has been entered after consultation with the parties. Absent good cause shown, the deadlines set by this order will not be modified or extended.

IT IS SO ORDERED.

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PRESIDING UNITED STATES JUDGE