



UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TENNESSEE

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.

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

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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.
- 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).

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

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 2012 file in 12-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 \$176.00.

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 \$100.00 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.

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 web site, 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), allowing an additional three (3) days after electronic service and Fed. R. Crim. P. 45(c), allowing the same three-day addition. 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 redaction 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. The submitting filing should also ensure that the Certificate of Service reflects appropriate service for Sealed Motions or Sealed Documents.

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

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.

11.2.3 Time to Respond Under Electronic Service

In accordance with Fed. R. Civ. P. 6(e) and Fed. R. Crim. P. 45(c), service by electronic means, even though immediate in nature, is treated the same as service by mail, so three (3) days are added to the prescribed period to respond.

11.3 Certificates of Service are Still Mandatory Despite the Issuance of NEFs

Notwithstanding the fact that the ECF System generates an immediate Notice of Electronic Filing or NEF to every E-Filer in a case where an electronic filing has been made, E-Filers still must provide a Certificate of Service on every document filed in a case if any party or attorney has been served, electronically or otherwise. These certifications of service should include the names and addresses of all persons served and should also specify the means of service on each person served. This might seem redundant since the exact same information is contained in the text of the NEF, but this is just a requirement that must be followed. Thus, a typical certification might look like this:

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on December 28, 2010 a true and correct copy of the foregoing document was forwarded by first class U.S. Mail, postage pre-paid, to Robert Lee Jones, Inmate No. 1234567, ABC Correctional Institution, 212 State Route 78, Jonesboro, MS 35609 and by electronic means through the Court's ECF System to Bobby Brown, Brown & Smith, 312 Third Street, Memphis, TN 38105.

Signed: s/John Allen Smith

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.

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 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.
