FILED

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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS OFFICE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

IN THE MATTER OF:)
)
ELECTRONIC FILING RULES)

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ORDER ADOPTING THE ELECTRONIC FILING RULES

THIS MATTER HAVING COME BEFORE THE COURT to adopt the rules to implement an Electronic Case Filing system , and it appearing to the Court that the rules comply with guidelines pertinent thereto promulgated by the Administration Office of the United States Courts, it is therefore

ORDERED that this Court hereby approves and adopts these Electronic Filing Rules to be the rules governing electronic filing in this Court, which shall remain in full force and effect unless amended by the District Court.

IT IS FURTHER ORDERED that the Clerk of this Court make copies of the Electronic Filing Rules available to the public.

Dated this 28th day of March, 2003.

G. Patrick Murphy
Chief Judge G. Patrick Murphy

J. Phil Gilbert
Judge J. Phil Gilbert

David R. Herndon
Judge David R. Herndon

Michael J. Reagan
Judge Michael J. Reagan

Electronic Filing Rules

RULE 1 SCOPE OF ELECTRONIC FILING (Model Rule [modified])

The court will designate which cases will be assigned to the Electronic Filing System. Except as expressly provided and in exceptional circumstances preventing a Filing User from filing electronically, all documents to be filed with the court in connection with a case assigned to the Electronic Filing System must be electronically filed. **Exemptions will be granted only for good cause shown.**

Notwithstanding the foregoing, persons who are not Filing Users in the Electronic Filing System are not required to electronically file documents in a case assigned to the System.

- *The User's Manual will have to set forth what cases fall under the ECF requirement, and the steps for initiating civil and criminal cases. (The Model Rules contain the appropriate language).*
- *Because Fed.R.Civ.P. 5(e) requires the Clerk to accept any paper filed, regardless of form, we have to include an escape valve.*

RULE 2 ELIGIBILITY, REGISTRATION, PASSWORDS
(Model Rule [modified])

Attorneys admitted to the bar of this court, including those admitted pro hac vice, must register as Filing Users of the court's Electronic Filing System **or move for exemption**. Registration is in a form prescribed by the clerk and requires the Filing User's name, address, telephone number, internet e-mail address, and a declaration that the attorney is admitted to the bar of this court. Registrants will be provided training and a CM/ECF User's Manual.

No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User.

If the court permits, a party to a pending civil action who is not represented by an attorney may register as a Filing User in the Electronic Filing System solely for purposes of the action. Registration is in a form prescribed by the clerk and requires identification of the action as well as the name, address, telephone number, and internet e-mail address of the party. If, during the course of the action, the party retains an attorney who appears on the party's behalf, the attorney must advise the clerk to terminate the party's registration as a Filing User upon the attorney's appearance.

Provided that a Filing User has an internet e-mail address, registration as a Filing User constitutes consent to electronic service of all documents as provided in these rules in accordance with the Federal Rules of Civil Procedure **and the Federal Rules of Criminal Procedure**.

Once registration is completed, the Filing User will receive notification of the user log-in and password. Filing Users agree to protect the security of their passwords and immediately notify the clerk if they learn that their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

- *A safety valve is added for attorneys to receive an exemption from ECF, e.g. elderly solo practitioners.*

- *The third paragraph is drafted to exclude pro se criminal defendants from utilizing ECF.*

RULE 3 CONSEQUENCES OF ELECTRONIC FILING
(Model Rule [modified])

Electronic transmission of a document to the Electronic Filing System consistent with these rules, together with the transmission of a Notice of Electronic Filing from the court, constitutes filing of the document for all purposes of the Federal Rules of Civil Procedure**, the Federal Rules of Criminal Procedure** and the local rules of this court, and constitutes entry of the document on the docket kept by the clerk under Federal Rules of Civil Procedures 58 and 79 **and Federal Rules of Criminal Procedure 49 and 55**.

When a document has been filed electronically, the official record is the electronic recording of the document as stored by the court, and the filing party is bound by the document as filed. Except in the case of documents first filed in paper form and subsequently submitted electronically under Rule 1, a document filed electronically is deemed filed at the date and time stated on the Notice of Electronic Filing from the court.

Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight local time where the court is located in order to be considered timely filed that day, unless a specific time is set by the court. Pursuant to Federal Rule of Civil Procedure 6(e) **and Federal Rule of Criminal Procedure 45(c)**, whenever something is served electronically, three days are added to the prescribed response period.

• *This rule is drafted to require transmission of a filing by midnight, as opposed to merely initiating the filing process.*

• *Are all judges in agreement that the 3 days added pursuant to the mailbox rule are tagged on at the very end of the calculation?*

RULE 4 ENTRY OF COURT ORDERS
(Model Rule [modified])

All orders, judgments, ~~and~~ minute entries **and notices** filed in accordance with these rules will constitute entry on the docket kept by the clerk under Federal Rules of Civil Procedure 58 and 79 **and Federal Rules of Criminal Procedure 49 and 55**. Any order filed electronically without the original signature of a judge **or clerk** has the same force and effect as if the judge **or clerk** had affixed the judge's **or clerk's** signature to a paper copy of the ~~order~~ **document** and it had been entered on the docket in a conventional manner.

A Filing User submitting a document electronically that requires a judge's **or the clerk's** signature must also promptly deliver the document in such form as the court requires.

- *Routine documents entered by the clerk's office should be encompassed by this rule.*

- *The User's Manual will have to set forth how to submit a proposed order or other document requiring a signature. Submitting such proposed documents as part of a motion does not work in the ECF format because it technically means the proposed document has been filed, and it will be confusing when utilizing the word-search feature. An e-mail drop box is the suggested mechanism.*

RULE 5 ATTACHMENTS, EXHIBITS, AND MAXIMUM SIZE OF FILINGS (Committee Rule)

Filing Users must submit in electronic form all documents referenced as exhibits or attachments, unless the court permits conventional filing. However, due to technical constraints, no document larger than 20 pages may be electronically filed. Documents exceeding the maximum number of pages shall be conventionally filed on paper with the clerk. **If a motion is filed electronically, and related exhibits, attachments or a brief are filed conventionally, the motion shall include a form entitled "Notice Regarding [Exhibit, Attachment or Brief]" specifying that related documents have been filed conventionally.** The maximum number of pages applies to each Portable Document Format (PDF) file. A motion, brief in support thereof, and exhibits ~~may~~ **must** each be filed as a separate PDF file**, labeled for easy identification**.

Service shall comport with Electronic Filing Rule 8.

- *The new Local Rule regarding dispositive motions gives the parties the option of consolidating the motion and brief into one document – the e-filing rule (re-drafted per the mentors) requires separate filings.*

- *The User's Manual will have to set forth file name protocols.*

- *Does the mere reference to Filing Rule 8 make it clear that paper filings should be served the conventional way, and e-filings should be served electronically?*

- *A form e-service form should be included in the User's Manual.*

- *Excerpts are encouraged.*

RULE 6 SEALED DOCUMENTS
(Committee Rule)

Information and documents a party seeks to protect and/or seal, or which the court has ordered sealed, or which by law must be sealed, shall be conventionally filed in paper format under seal. The first page of any such filing shall be a form entitled "Notice Regarding Sealed Document(s)" A motion to file documents under seal may be filed electronically unless prohibited by law. The order of the court authorizing the filing of documents under seal may be filed electronically unless prohibited by law. A paper copy of the order must be attached to the documents under seal and be delivered to the clerk. Service in such instances shall comply with Electronic Filing Rule 8.

The clerk shall have authority to provisionally seal any document upon receipt, pending judicial review. Filing Users must bear ultimate responsibility for ensuring that information is properly redacted and/or sealed.

• *In case someone e-files something in error and as an added safeguard against the release of sensitive or protected information in error, the clerk should be able to instantly seal something until the court can determine the proper course of action.*

RULE 7 RETENTION AND SIGNATURE REQUIREMENTS (Committee Rule)

Upon registration, Filing Users automatically endorse their electronic signature for purposes of Federal Rule of Civil Procedure 11 specifically, and the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure generally, and the local rules. The Filing User's electronic signature also serves as a valid signature for purposes of unsworn declarations pursuant to 28 U.S.C. § 1746, service and filing pursuant to Federal Rule of Civil Procedure 5 and Federal Rule of Criminal Procedure 49, and establishing perjury pursuant to 18 U.S.C. §§ 1621-1623.

A. Documents that may be filed electronically without an accompanying signed original hard copy

Any document allowed to be filed electronically and not requiring the submission of a signed original, as provided in subsection B, shall indicate on the electronically filed document a signature, e.g., "s/ Jane Doe." The originally executed hard copy must be maintained by the filer for five (5) years after final resolution of the action, including final disposition of all appeals. The original hard copy must be produced at any time when ordered by the court.

B. Documents that may be filed electronically only if accompanied by a signed original hard copy

The following documents may be filed electronically only if a signed original hard copy document is also filed with the court and a copy served on all other parties:

1. Any document containing an oath or a declaration, certification, verification, or statement under penalty of perjury, other than by an attorney of record in the case who is a Filing User;

2. Any document setting forth any stipulation, other than by an attorney of record in the case who is a Filing User;

3. In a criminal case, any document containing the signature of the defendant;

4. Certified copies of judgments or orders of other courts.

Documents requiring signatures of more than one party must be electronically filed either by: (1) submitting a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document; (3) identifying on the document the parties whose signatures are required and by the submission of a notice of endorsement by the other parties no later than three business days after filing; or (4) in any other manner approved by the court.

- *User's Manual and User Registration materials should also stress perjury implications.*
- *Protocols for criminal and grand jury documents must be established in User's Manual.*

RULE 8 SERVICE OF DOCUMENTS BY ELECTRONIC MEANS (Model Rule [modified])

Each person electronically filing a document must serve a "Notice of Electronic Filing" to parties

RULE 9 NOTICE OF COURT ORDERS AND JUDGMENTS (Model Rule [modified])

Immediately upon the entry of an order, judgment, ~~or~~ minute entry **or notice** in an action assigned to the Electronic Filing System, the clerk will transmit to Filing Users in the case, in electronic form, a Notice of Electronic Filing. Electronic transmission of the Notice of Electronic Filing constitutes the notice required by Federal Rule of Civil Procedure 77(d) **and Federal Rule of Criminal Procedure 49(c)**. The clerk must give notice to a person who has not consented to electronic service in paper form in accordance with the Federal Rules of Civil Procedure **and the Federal Rules of Criminal Procedure**.

RULE 10 TECHNICAL FAILURES
(Model Rule [modified])

A Filing User whose filing is made untimely as the result of a technical failure may seek appropriate relief from the court. Technical failures cannot extend jurisdictional deadlines.

RULE 11 PUBLIC ACCESS AND FEES
(Committee Rule)

A person may review at the clerk's office filings that have not been sealed by the court. A person may also access the Electronic Filing System at the court's internet site [internet address] by obtaining a PACER log-in and password. A person who has PACER access may retrieve docket sheets **in civil and criminal cases** and documents **in a civil case, but only counsel of record may retrieve documents in a criminal case.**

Upon receipt of electronic notice of filing, any party Filing User will have one opportunity by way of a hyperlink to view and either print or download the document for free. Party Filing Users who have already electronically accessed a document once and anyone else who accesses a document will be charged a ~~reasonable~~ per page fee.

- *User's Manual should further explain that only attorneys of record in a criminal case and other specifically authorized users (like Probation) will have electronic access to criminal* cases, *but the transmission list may be broadened.*

- *We may want to draft an exception to permit the court and all parties in a criminal case to consent to the clerk posting certain documents in prominent cases on web page or PACER access.*

- *The per page fee is established by law, so the rule should not set the stage for debate.*