

United States District Court
Western District of Texas

Administrative Policies and Procedures for Electronic Filing
in Civil and Criminal Cases

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Section 1

Title

These Procedures may be known and cited as Administrative Policies and Procedures for Electronic Filing in Civil and Criminal Cases in the United States District Court for the Western District of Texas (“Electronic Filing Procedures”).

Section 2

Definitions and Related Information

- a. “Court” means the United States District Court for the Western District of Texas.
- b. “Electronic Filing” means uploading a pleading or document, in PDF format, directly from the Filing User’s computer, using the Court’s Electronic Filing System to file that pleading or document in the Court’s case file. Sending a document or pleading to the Court via electronic mail (e-mail) as an attachment does not constitute “electronic filing.”
- c. “Electronic Filing System” means the Court’s Internet-based automated system that receives and stores documents filed in electronic form. The program is part of the CM/ECF (Case Management/Electronic Case Files) software developed for the Federal Judiciary by the Administrative Office of the United States Courts. When a document has been filed electronically, the official record is the electronic recording of the document as stored in the Court’s electronic filing system.
- d. “Electronic Notice Facilities” means notice sent out by the Court using the CM/ECF software.
- e. “Electronically Created Document” means a document generated from computer software programs. The document is available and/or stored by means of a computer device, and can be transmitted in an electronic data interchange in various formats between computers utilizing computer software.
- f. “Filing User” means a person who has registered to file documents electronically with the Court. Filing Users must be one of the following: (1) admitted to practice before the Court and a member in good standing of the Court pursuant to Local Court Rule AT-1; (2) admitted pro hac vice; (3) authorized to represent the United States of America; or (4) proceeding as a nonprisoner pro se litigant approved as a Filing User by the Court. A Filing User must receive a login and password from the Court to use the Court’s electronic filing system.

- g. “Hyperlink” is a reference in a hypertext document to another document or other resource. It is similar to a citation in literature. However, combined with a data network and suitable access protocol, it can be used to retrieve the resource referenced. A Hyperlink document can be saved, viewed, or displayed as part of the referencing document.
- h. “Notice of Electronic Filing (“NEF”) means an electronic notice automatically generated by the Electronic Filing System at the time a document is docketed. The NEF includes the date and time of docketing, date of filing, the name of the party and Filing User filing the document, the type of document, the text of the docket entry, and the name of the party and Filing User receiving the notice. If a publicly-available document is attached to the docket entry, the NEF will contain a Hyperlink to the filed document allowing recipients to retrieve the document.
- i. “Notice Only Party” means someone who is not an attorney of record, but may be an interested third person. Examples of Notice Only Parties include but are not limited to: administrative law judges, Social Security liaisons, trustees, and victim's coordinators.
- j. “PACER (“Public Access to Court Electronic Records”) is an automated system that allows a person to view, print, and download Court docket information over the Internet. Users must register with the PACER Service Center at <http://pacer.psc.uscourts.gov/>.
- k. “Portable Document Format (“PDF”) is a document file created with a word processor, or a paper document that has been scanned and converted to PDF. Documents must be converted into PDF format to be filed electronically with the Court. Converted files contain the file name extension “.pdf”.
- l. “Pro Se Litigant” means a person who represents himself or herself in a Court proceeding without the assistance of an attorney. A Pro Se Litigant who is incarcerated or on probation or supervised release may not participate in the Electronic Filing System and must file all documents by Traditional Filing.
- m. “Scanned Documents” are paper documents that are converted to PDF via a scanner or multifunction copier or scanner, as opposed to converting an electronic document from a word processor. When scanning paper documents that will subsequently be filed electronically, Filing Users should make certain their scanners are configured for 300 pixels per inch (ppi) and black and white rather than color scanning.
- n. “Technical Failure” means a malfunction of Court-owned or -leased hardware, software, or telecommunications equipment that results in the inability of a Filing User to submit a document electronically. Technical Failure does not include malfunctioning of a Filing User's hardware, software or telecommunications equipment.

- o. “Traditionally Filed,” also referred to as “conventional filing,” means submitting paper copies of pleadings and documents in the traditional or conventional manner either in person, by courier, or via United States Postal Service.

Section 3

Scope of Electronic Filing

- a. All documents submitted for filing are required to be filed electronically using the Electronic Filing System, unless otherwise permitted by these Electronic Filing Procedures or authorized by the Court.
- b. These Electronic Filing Procedures do not supersede the Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, or Federal Rules of Appellate Procedure. However, in the event of a conflict with the Local Court Rules for the Western District of Texas (“Local Court Rules”), these Electronic Filing Procedures govern.
- c. All civil, criminal, and miscellaneous cases are assigned to the Electronic Filing System. Except as expressly provided in section 5.a. below, or elsewhere in these Electronic Filing Procedures, or in other exceptional circumstances, a Filing User must file electronically all documents in PDF format.
- d. Social Security cases. All documents in Social Security cases must be filed electronically, except as noted below:
 - (1) Complaint. The complaint and other documents typically submitted at the time a Social Security case is initiated in federal court may be filed either electronically or in the traditional manner.
 - (2) Social Security transcripts of administrative hearings may be filed either electronically or in the traditional manner. Traditionally Filed transcripts will not be placed into the ECF system, but will be available in paper format with the clerk.
 - (3) Privacy. To address the privacy issues inherent in a social security review, Internet access to documents other than judgments, opinions and orders, will be limited to counsel and Court staff. Docket sheets will be available over the Internet to nonparties. Nonparties will continue to have direct access to view documents on file in the clerk’s office.
 - (4) Good cause. Upon a showing of good cause approved by the Court, the parties may file documents by Traditional Filing.
- e. Pursuant to Judicial Conference Policy regarding the electronic availability of transcripts of court proceedings and the Court’s May 8, 2008 General Order on

Electronic Filing of Transcripts, all transcripts of court proceedings must be filed electronically. This includes transcripts of sealed proceedings, which must be filed electronically under seal.

Section 4

Method of Electronic Filing

- a. All electronically filed documents must be filed using the Court's Electronic Filing System.
- b. Docketing by Filing Users
 - (1) The Electronic Filing System requires Filing Users to prepare the electronic docket entry for all electronically filed documents.
 - (2) Docket entries prepared by Filing Users are immediately posted to the official Court docket and made available to the Court, parties, and the public via PACER.
 - (3) If a document is submitted in error, the Filing User must file a motion to amend the pleading or a motion to strike the pleading in its entirety. If the Court grants such motion, the Filing User may resubmit the corrected document.
- c. In order to preserve the integrity of the Court record, Filing Users who insert Hyperlinks must also cite the authority by the traditional citation method. A Hyperlink reference is extraneous to any filed document and is not part of the record.
- d. If the filing of a document requires leave of Court, the Filing User must include for the Court's review the document as a PDF attachment to the motion requesting leave to file. If the Court grants the motion, the clerk will file the document, unless the Filing User is otherwise required to file traditionally as set forth in section 5.a. below or by order of the Court.
 - (1) For purposes of any deadline, a document is deemed filed on the date the Court grants the motion for leave to file, unless otherwise ordered by the Court.
 - (2) For purposes of service and computation of time for any response, a document is not deemed filed until filed by the clerk or Filing User, unless otherwise ordered by the Court.
- e. Filing Users must comply with the provisions of the Court's Amended Privacy

Policy, a copy of which is attached to these Electronic Filing Procedures as Exhibit 3.

Section 5

Traditionally Filed Documents: Filing, Scanning, and Service

- a. The following documents must be submitted traditionally unless otherwise noted:
 - (1) civil initiating documents, except for civil complaints and notices of removal, which may be filed traditionally or electronically;
 - (2) all criminal case initiating documents;
 - (3) all pleadings or motions that add or seek to add a new party, including amended civil pleadings, counterclaims, motions to intervene, and motions to appear amicus curiae.;
 - (4) documentary exhibits submitted at trial; and
 - (5) writs.
- b. Traditionally Filed documents will be scanned by the clerk when possible and made part of the electronic record.
- c. Paper clips or binder clips are preferred over the use of staples for all Traditionally Filed documents.
- d. Traditionally Filed documents must be served in accordance with Rule 5, Federal Rules of Civil Procedure, Rule 49, Federal Rules of Criminal Procedure, and Local Court Rules CV-5(b)(2) and CR-49(a). Although an NEF will be generated for Traditionally Filed documents that are scanned by the clerk, the NEF does not constitute service of Traditionally Filed documents.

Section 6

Eligibility, Registration, Passwords

- a. Attorneys admitted or otherwise authorized to practice in this Court must register as Filing Users. Attorneys admitted pro hac vice must register within 10 days of the order granting the motion to proceed pro hac vice. An eligible Pro Se Litigant may file papers with the clerk by Traditional Filing, but is not precluded from filing electronically as approved by the Court.
- b. The registration form prescribed by the clerk and located on the Court website requires:
 - (1) the Filing User's name, address, and telephone number;
 - (2) the Filing User's Internet e-mail address; and

- (3) a declaration that the attorney is admitted or authorized to practice in this Court or that the party has been approved to register as a Pro Se Litigant.
- c. The Filing User will receive notification of the Filing User's login and password within 48 hours of receipt of the registration form by the clerk.
 - d. Registration as a Filing User constitutes consent to electronic service of all documents as provided both in these procedures and by Rule 5, Federal Rules of Civil Procedure, and Rule 49, Federal Rules of Criminal Procedure.
 - e. A Filing User agrees to protect the security of the Filing User's login and password, and must immediately notify the clerk if either the login or password has been compromised. The Court may sanction a Filing User for failure to comply with this provision.
 - f. A Filing User must update the Filing User's Internet e-mail address and access password via the Electronic Filing System and must keep this information current to ensure timely electronic noticing of case activity. Filing Users may make firm address and phone number changes via the Electronic Filing System, thus superseding Local Rule AT-9.
 - g. Any attorney who is not a Filing User must submit to the Court in writing good cause why it is necessary that the attorney be authorized to file and serve documents by Traditional Filing.
 - h. If a Pro Se Litigant retains an attorney, the attorney must advise the clerk to terminate the Pro Se Litigant's registration as a Filing User upon the attorney's appearance.
 - i. If it is determined by the Court that the Filing User is abusing the privilege to electronically file documents or is consistently error prone in electronic filing, the Filing User's registration may be rescinded.
 - j. An attorney no longer licensed in this Court must withdraw from participating as a Filing User by providing the clerk with a notice of withdrawal.
 - k. The registration of an attorney's admission to proceed pro hac vice will be rescinded 60 days after the termination of the case, unless that attorney has a pending application for admission to practice in the Western District of Texas.

Section 7

Consequences of Electronic Filing

- a. Electronic transmission of a document through the Electronic Filing System constitutes the filing of the document pursuant to Rule 5, Federal Rules of Civil

Procedure, and Rule 49, Federal Rules of Criminal Procedure.

- b. The transmission of an NEF constitutes entry on the docket pursuant to Rule 79 of the Federal Rules of Civil Procedure, and Rules 49 and 55 of the Federal Rules of Criminal Procedure.
- c. Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight in the division in which the case is pending to be considered timely filed that day.

Section 8

Entry of Case-Related Documents by the Court

All documents signed by the Court or clerk will be filed in accordance with these procedures and will constitute entry on the docket maintained by the clerk pursuant to Rules 58 and 79 of the Federal Rules of Civil Procedure, and Rules 49 and 55 of the Federal Rules of Criminal Procedure. Any document electronically signed by a judge or clerk has the same force and effect as if the judge or clerk had signed a paper copy of the document and the document had been entered by the clerk on the docket in the traditional manner.

Section 9

Attachments and Exhibits

- a. A Filing User must submit in electronic form all documents referenced as exhibits or attachments unless the Court permits Traditional Filing. A Filing User must submit as exhibits or attachments only those excerpts of the referenced documents that are relevant to the matter under consideration by the Court.
- b. The record of an administrative agency or judicial proceeding may be filed by Traditional Filing.
- c. Proposed orders for electronically filed motions must be filed in PDF as an electronic attachment to the motion or included with the motion, unless otherwise directed by the Court.
- d. All documents other than the main document, such as an appendix, exhibit, affidavit, or a supplement, must be submitted as separate PDF documents. Each such document must be given a description that corresponds to the name used in the main document. For example, if the main document refers to “Exhibit A [Smith Declaration],” the Category must be “Exhibit” and the Description must be “A – Smith Declaration.”
- e. Unless authorized by the Court, trial exhibits will not be placed into the Electronic Filing System, but will be available in paper or electronic format with the clerk.

Section 10 Sealed Documents

- a. Sealed documents must be electronically filed in cases that are not sealed. A sealed document in a civil case requires leave of the Court before being filed. See Local Rule CV-5.2. Therefore, a Motion to Seal must be electronically filed and the Filing User must include the proposed document as a PDF attachment to the motion for the Court's review. If the Court grants the Motion to Seal, the sealed document will be filed by the clerk unless otherwise ordered by the Court. Unless otherwise directed by a specific divisional office standing order, a sealed document in a criminal case does not require leave of court.
- b. Sealed documents cannot be electronically accessed by attorneys or the public. An NEF will be generated for the sealed document, but the document will not be viewable. When a sealed plea agreement is filed, an NEF will be generated to the government and applicable defendant only. Accordingly, parties may not use the Court's electronic notice facilities to serve sealed documents. Service must be by other means.

Section 11

Ex Parte Documents

Ex parte documents must be electronically filed in cases that are not sealed. When an ex parte motion or document is filed, an NEF will be generated only to the Filing User. Sealed ex parte documents cannot be electronically accessed by attorneys or the public, including the Filing User.

Section 12

Format and Size of Electronically Filed Documents

- a. Word processing documents must be converted to PDF format not scanned and must be converted with a fully licensed PDF conversion program. Documents converted by unlicensed (trial) versions will be found deficient.
- b. All documents submitted for electronic filing must maintain a minimum one-inch margin at the top of each page to allow room for the electronic file stamp to be affixed to the document.
- c. All electronically filed documents converted to PDF from a word processing program must be created in 12-point font and double-spaced.

- d. The Filing User is responsible for the legibility of a scanned document. If a scanned document is not legible, the Filing User must file the paper document by Traditional Filing.
- e. Each filing must consist of only one pleading. Multiple pleadings (e.g., an answer and a motion to dismiss, or a notice of appeal and a motion for certificate of appealability) must be filed as separate documents.
- f. If an electronically filed document exceeds 200 pages, the clerk may require that the Filing User also provide a paper copy to the Court.
- g. PDF Files submitted for electronic filing must not exceed a file size of 50 megabytes. Files exceeding 50 megabytes will be rejected by the CM/ECF system.

Section 13

Signatures and Retention Requirements

- a. Entry of a Filing User's login and password will serve as the Filing User's signature for any purpose. An electronically filed document must include a signature block in compliance with Local Court Rule CV-10. The Filing User under whose login and password the document is submitted must be identified by inserting an electronic signature image or by typing an /s/ followed by the Filing User's Name where the signature would otherwise normally appear.
- b. A Filing User must not permit the Filing User's password to be used by anyone other than an agent authorized by the Filing User.
- c. Unless otherwise required by law, a Filing User who electronically files any document requiring the signature of other individuals must either (1) submit a scanned document containing the necessary signatures; or (2) indicate on the filed document by the designation /s/ that the original document has been signed. A designation on a document that one person has affixed another person's signature "by permission" may be used under circumstances when signing by permission would be acceptable on a document filed by Traditional Filing.
- d. A document containing the signature of a defendant in a criminal case must be filed in a scanned format that contains an image of the defendant's actual signature. The original document must be retained for one year after final resolution of the action, including any appeal.
- e. A Filing User filing a document electronically or traditionally must retain, in paper or

electronic form, a copy of the filed document for one year after final resolution of the action, including any appeal.

Section 14

Service of Documents by Electronic Means

- a. The NEF constitutes service of any unsealed electronically filed document on Filing Users. A Filing User may also notify another Filing User of electronically filed documents by other means, but the NEF establishes the service date. Parties who are not Filing Users must be served in accordance with the Federal Rules and the Local Court Rules.
- b. An NEF will be generated when a sealed document is filed, but the document will not be viewable. Accordingly, parties may not use the Court's Electronic Notice Facilities to serve sealed documents. Service must be by other means.
- c. All filed documents that must be served on one or more parties by means other than the Court's Electronic Notice Facilities must include a certificate of service that indicates the manner of service. For sample language to use in the certificate of service, see Exhibit 1.
- d. There are three methods for determining whether a person required to be served with a document is a Filing User:
 - (1) the Electronic Filing System includes a program called "Mailing Information for a Case" that can generate a list of Filing Users on a case-by-case basis;
 - (2) the docket includes the party's e-mail address if the party is a Filing User; and
 - (3) the NEF details who will and who will not receive electronic service by the Court.
- e. If an NEF has not been successfully transmitted to an intended recipient, the clerk will notify the Filing User who originated the filing of the failure in transmission. Service by electronic means is not effective if the Filing User learns that attempted service did not reach an intended recipient.
- f. For the purpose of computation of time, the three-day mailing provisions found in Rule 49, Federal Rules of Criminal Procedure, does not apply to service by electronic means.
- g. In multidefendant criminal cases, all Filing Users will receive all NEFs, except when a sealed plea agreement is filed. When a sealed plea agreement is filed, an NEF will be generated to the Government and applicable defendant only.

Section 15

Notice of Court Orders and Judgments

- a. Immediately upon entry of an order or judgment, the clerk will transmit an NEF to Filing Users. Transmission of the NEF constitutes the notice required by Rule 77, Federal Rules of Civil Procedure, and Rule 49, Federal Rules of Criminal Procedure. The clerk will send paper copies of orders and judgments to non-Filing Users.
- b. The Statement of Reasons page of the Judgment in a Criminal Case will not be available electronically. The clerk will send a paper copy of the Statement of Reasons to the applicable parties.

Section 16

Technical Failures/Difficulties

- a. Due to the possibility of Technical Failure or system outage, a Filing User is cautioned not to attempt to electronically file a document on a due date after the clerk's office has closed for that day. Known Court system outages will be posted on the Court website.
- b. A Filing User whose electronic filing is or would be made untimely as the result of a Technical Failure may seek appropriate relief from the presiding judge in the case.
- c. Technical difficulties with the Filing User's system or Internet service provider do not excuse an untimely filing. A Filing User who cannot file a document electronically because of difficulties with the Filing User's system or Internet service provider must file the document by Traditional Filing and submit a "declaration of technical difficulties" (see Exhibit 2) to the clerk.
- d. Undeliverable NEF to a Primary E-mail Address
 - (1) If an NEF cannot be delivered to a recipient's primary e-mail address due to difficulties with the recipient's system or Internet service provider, the clerk will attempt to resend the NEF. If the second attempt fails, the clerk will attempt to contact the recipient to resolve the problem. If the problem cannot be resolved, the clerk will notify the Court of the recipient's noncompliance with these procedures.
 - (2) If an NEF cannot be delivered due to difficulties with Court's system, the NEF will be resent as soon as possible (normally within one business day) with an explanation for the delay.

- e. Undeliverable NEF to a Secondary E-mail Address or Notice Only Party
 - (1) Because a secondary e-mail address is optional, the clerk will not attempt to correct problems resulting from an NEF that cannot be delivered to a secondary email address. The clerk will delete the e-mail address from the profile of the recipient without notification.
 - (2) If an NEF cannot be delivered to a Notice Only Party, the clerk will make one attempt to have the recipient correct the problem. Failing timely action by the Notice Only recipient, the clerk will delete that address from the profile of the recipient without further notification.
- f. Due to the possibility of unsuccessful transmissions of the NEF, parties are strongly encouraged to check the docket at regular intervals. A PACER account is necessary to check the electronic docket.

Section 17 Confidentiality and Public Access

- a. A Filing User must comply with the provisions of this Court's Amended Privacy Policy, a copy of which is attached to these Electronic Filing Procedures as Exhibit _3.
- b. All non-sealed filings are available for review by the public. A person may access the Electronic Filing System _ on the Court website by obtaining a PACER login and password. A person who has PACER access may retrieve docket sheets and non-sealed documents.
- c. Copies of all non-sealed documents may be purchased from the clerk in person or by mailing a request designating the case number and document by title or docket number. Requests submitted by mail must include the applicable fee, which can be obtained by contacting the clerk.

Section 18 Support Issues

The clerk will provide assistance to Filing Users via online support documentation and e-mail. The documentation and email address are available on the Court website. Court personnel cannot and will not provide any advice, direction, or guidance relating to the Filing User's computer system, any legal matter, or the content of legal documents. Support is limited to the administration and proper use of the Electronic Filing System.

EXHIBIT 1
Certificate of Service

(Sample Language)

CERTIFICATE OF SERVICE

I certify that I have served the forgoing document via _____ to the following:

JoAnn Johansson
Attorney at Law
745 East Mulberry Avenue
San Antonio, Texas 78212
Attorney for James Jameson

/s/Peter Peterson

EXHIBIT 2
DECLARATION THAT FILING USER WAS UNABLE TO FILE IN
A TIMELY MANNER DUE TO TECHNICAL DIFFICULTIES

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
_____ DIVISION

DECLARATION THAT FILING USER WAS UNABLE TO FILE
IN A TIMELY MANNER DUE TO TECHNICAL DIFFICULTIES

Case Number: _____ Party: _____

Filing User: _____ State Bar Number: _____

E-mail Address: _____ Telephone Number: _____

Title of Document: _____

Filing Deadline Date: (if any): _____

Please take notice that the above named Filing User was unable to file the attached document in a timely manner due to technical difficulties. The reason(s) that I was unable to file this document(s) in an electronic format and the good faith efforts I made prior to the filing deadline to both file in a timely manner and to inform the Court and the other parties that I could not do so are set forth below.

Please check all that apply:

- ____ Malfunction of Filing User's computer hardware
- ____ Malfunction of Filing User's scanner
- ____ Malfunction of Filing User's software
- ____ Malfunction of Filing User's telecommunications capability

I declare under penalty of perjury that the foregoing is true and correct.

EXHIBIT 3
NOTICE OF ELECTRONIC FILING

U.S. District Court [LIVE]
Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 10/14/2005 at 4:42 PM CDT and filed on 10/14/2005

Case Name: Jones v. Doe
Case Number: 1:05-cv-150
Filer: James Doe
Document Number: 10

Docket Text:
MOTION TO Dismiss by James Doe. (James, Doe)

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename: n/a
Electronic document Stamp:

[STAMP dcecfStamp_ID=1080075687 [Date=10/14/2005] [FileNumber=71428-0]
[40a012c27475ba6fb0d1a468a60f5962228243fbc57e1ff2c42e51ed9dfdf5a17bfc
c831fb5a747c4834dc51e8a5b7957a40e44746c31f9a05cb9aa2b07d0cd5]]

1:05-cv-150 Notice will be electronically mailed to:

William B. Smith smith@lawfirm.net , peterson@lawfirm.net

1:05-cv-150 Notice will be delivered by other means to:

Mary Simmons
Attorney at Law
111 2nd Street
Austin, TX 78745