

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

JAN 28 2005

Michael N. Milby, Clerk
By Deputy Clerk *Joyce Hutcherson*

IN RE:

PROVISIONAL AUTHORIZATION FOR	§	GENERAL ORDER NO. 2005-03
ELECTRONIC FILING IN CRIMINAL CASE	§	
	§	
AND	§	
	§	
ADOPTION OF AMENDED ADMINISTRATIVE	§	
PROCEDURES FOR ELECTRONIC FILING IN	§	
CIVIL AND CRIMINAL CASES	§	

ORDER

Pending the opportunity for public comment and approval by the Fifth Circuit Judicial Council of amended Local Criminal Rule 49 under 28 U.S.C. §2071, the provisions of Local Civil Rule 5 with respect to electronic filing and service in civil cases are applicable to criminal cases, and the attached amended Administrative Procedures integrating the requirements for electronic filing in criminal cases are effective February 1, 2005.

This Order supersedes General Order No. 2004-9 and the Administrative Procedures for Electronic Filing adopted thereunder.

Signed at Corpus Christi, Texas this 28th day of January, 2005.

Hayden Head

Hayden Head
Chief Judge

United States District Court
Southern District of Texas

Administrative Procedures for Electronic Filing
in Civil and Criminal Cases*

1. Scope of Electronic Filing

A. These procedures are intended to facilitate electronic filing and do not supersede any federal or local rules of procedure.

B. All civil and criminal cases will be assigned to the Electronic Filing System.

(1). Civil Cases. Except as expressly provided or in other exceptional circumstances, a Filing User should file electronically all complaints, initial papers, petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the court in connection with a civil case.

(2). Criminal Cases. Except as expressly provided or in other exceptional circumstances, a Filing User should file electronically all petitions, motions, memoranda of law, or other pleadings and documents required to be filed with the court in connection with a criminal case. The charging documents, including the complaint, information, or indictment, shall be filed either in the traditional

manner in paper form or as electronic documents that contain an image of any legally required signature.

- C. A Filing User filing a scanned document must verify the legibility of the document. A non-Filing User is not required to electronically file pleadings and other papers in a case assigned to the System. Once registered, a Filing User may withdraw from participation in the Electronic Filing System by providing the Clerk's office with written notice of the withdrawal.
- D. Pleadings and other papers not electronically filed (conventional filings) will be scanned by the Clerk and will become part of the electronic record, unless a request to seal the documents is pending or the documents have been ordered sealed. After scanning conventional filings, the Clerk will retain them in one master file by date of filing. The electronic record is the official court record.

2. Eligibility, Registration, Passwords

- A. Attorneys admitted to the bar of this Court, as well as those admitted pro hac vice, may register as Filing Users of the court's Electronic Filing System. The registration form prescribed by the Clerk shall require 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 or admitted pro hac vice. Registration as a Filing User constitutes consent to

electronic service of all documents as provided in these procedures and in accordance with Rule 5(b)(2)(D), Fed. R. Civ. P., and Rule 49(b), Fed. R. Crim. P.

- B. 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 shall immediately notify the Clerk if their password has been compromised. Users may be subject to sanctions for failure to comply with this provision.

3. Consequences of Electronic Filing

- A. Electronic transmission of a document to the Electronic Filing System consistent with these procedures, together with the transmission of a Notice of Electronic Filing issued by the Court, constitutes filing of the document for all purposes of the Federal Rules of Civil and Criminal Procedure and the Local Rules of this Court, and constitutes entry of the document on the docket kept by the Clerk of Court under Rules 58 and 79, Fed. R. Civ. P., and Rules 49 and 55, Fed. R. Crim. P.
- B. 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. A document filed electronically is

deemed filed at the date and time stated on the Notice of Electronic Filing issued by the Court.

- C. Filing a document electronically does not alter the filing deadline for that document. Filing must be completed before midnight, Central Time Zone, in order to be considered timely filed that day.

4. Entry of Court-Issued Documents

- A. All orders, decrees, judgments, and proceedings of the Court will be filed in accordance with these procedures and will constitute entry on the docket kept by the Clerk of Court under Rules 58 and 79, Fed. R. Civ. P., Rules 49 and 55, Fed. R. Crim. P. All signed orders will be filed electronically. Any order or other court-issued document filed electronically without the original signature of a judge or Clerk has the same force and effect as if the judge or Clerk had signed a paper copy of the order and it had been entered by the Clerk on the docket in a conventional manner.
- B. A civil case summons may be signed, sealed and issued electronically, although a party may not serve any summons electronically. The court may issue a criminal case warrant or summons electronically, but they must be served in accordance with Rule 4(c), Fed. R. Crim. P.

C. Proposed orders for electronically filed motions must be filed as an electronic attachment to the motion, unless otherwise directed by the presiding judge.

5. Attachments and Exhibits

Filing Users should submit in electronic form all documents referenced as exhibits or attachments, unless the presiding judge permits conventional filing. A Filing User shall only submit as exhibits or attachments those excerpts of the referenced documents that are material to the matter under consideration. The source and page numbers of excerpted material must be clearly and prominently identified, and the length of the source document must be disclosed. Filing Users who file excerpts of documents as exhibits or attachments may, if necessary, timely file additional excerpts or the complete document. Responding parties may timely file such additional excerpts or complete documents as they believe are material. The presiding judge also may require parties to file additional excerpts or the complete document.

6. Sealed Documents

A motion requesting that documents be placed under seal ~~may~~ must be filed conventionally and not electronically, along with the subject documents. The motion and documents will not be scanned pending a ruling on the motion. A court order authorizing the filing of documents under seal may be filed

electronically unless prohibited by law. The documents shall then be retained in conventional form. A paper copy of the order sealing the documents must be attached to the documents under seal.

7. Document Size Limitation

The current size limitation for electronically filed documents, including exhibits or attachments, is 3 megabytes. While this limit will not likely affect electronically created documents, in the case of scanned documents it would be the equivalent of approximately 50 pages. Larger documents must be separated into 3 megabyte sections. As technology develops in the future, the Court periodically will publish technical instructions governing the electronic filing of unusually voluminous pleadings, attachments, and exhibits. Any Filing User encountering technical difficulties electronically filing voluminous documents may choose to file them conventionally.

8. Signatures and Retention Requirements

A. The user log-in and password required to submit documents to the Electronic Filing System serve as the Filing User's signature on all electronic documents filed with the Court. They also serve as a signature for purposes of Rule 11, Fed. R. Civ. P., the Federal Rules of Criminal Procedure, the Local Rules of this Court, and any other purpose for which a signature is required in connection with court proceedings. Electronically

filed documents must include a signature block in compliance with Local Rule number 11.3.A. The name of the Filing User under whose log-in and password the document is submitted must be preceded by an “s/” and typed in the space where the signature would otherwise appear.

- B. Each password is personal to the Filing User, who shall not permit that password to be used by anyone, including other attorneys, other than an authorized agent of the Filing User.
- C. 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 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 signature.
Original documents containing original signatures of persons other than the Filing User must be retained by the filing users until three years after the time for all appeals in the case has expired. 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 conventionally filed document.

9. Service of Documents by Electronic Means

- A. The Notice of Electronic Filing that is automatically generated by the Court's Electronic Filing System constitutes service of the filed document on Filing Users. A Filing User may also notify another Filing User of electronically filed documents by other means (e.g., fax, mail, personal delivery), but the service date shall still be determined by the electronic notice. Parties who are not Filing Users must be served with a paper copy of any electronically filed document in accordance with the Federal Rules of Civil and Criminal Procedure, and the Local Rules.
- B. A certificate of service must be included with all documents filed electronically, reflecting that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing and indicating how service was accomplished on any party or counsel who is not a Filing User.
- C. If the System indicates that a Notice of Electronic Filing has not been successfully transmitted to an intended recipient, the Clerk shall forthwith notify the Filing User who originated the filing so that other service may be attempted. See Rule 5(b)(3), Fed. R. Civ. P.; Rule 49(b), Fed. R. Crim. P.

10. Notice of Court Orders and Judgments

Immediately upon the entry of an order or judgment 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 Rule 77(d), Fed. R. Civ. P., and Rule 49(c), Fed. R. Crim. P. The Clerk will also give notice by facsimile transmission of the entry of orders and judgments to Filing Users, and must send a copy of orders and judgments by first-class mail to unrepresented persons or to attorneys who have not consented to notice by facsimile transmission or electronic service in accordance with the Federal Rules of Civil and Criminal Procedure.

11. Technical Failures

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.

12. Public Access and Confidentiality

A. A person may review at the Clerk's office filings that have not been sealed by the Court. A person also may access the Electronic Filing System at the Court's internet site, www.txs.uscourts.gov, by obtaining a PACER log-in and password. A person who has PACER access may retrieve docket sheets

and documents. Only a Filing User under Section 2 of these procedures may file documents electronically.

- B. Anyone may purchase conventional paper, certified, and exemplified copies of electronically filed documents 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 a self-addressed, stamped return envelope and the applicable fee provided in 28 U.S.C. § 1914.
- C. All filers must comply with the provisions of General Order No. ~~2003-4~~, 2004- 11 Protecting Personal Privacy in Public Case Files, and refrain from including, or partially redact where inclusion is necessary, the following personal identifiers from electronic and conventional filings with the Court:
- (1) Social Security Numbers
 - (2) Names of minor children
 - (3) Dates of birth
 - (4) Financial account numbers
 - (5) Home addresses to the city and state.