

TEN ESSENTIALS EVERY LAWYER NEEDS TO KNOW ABOUT E-FILING AND E-NOTICES IN OREGON'S FEDERAL DISTRICT COURT

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Oregon lawyers who do not regularly practice in Oregon's federal courts have recently been surprised by the fact that the use of the Court's Case Management / Electronic Case File (CM/ECF) System for the electronic submission of documents is now mandatory, and some have had trouble navigating its requirements. Many attorneys are surprised to learn that the District of Oregon Court no longer sends them any paper copies of notices, orders or judgments. These are now served electronically through e-mail notification messages. This will pose problems for attorneys who do not regularly check their e-mail to determine if notices from the Court have been received or documents from other parties have been filed.

The case initiation process (the filing of a complaint or notice of removal) does continue in the conventional manner so that the court can assign a case number, judge, issue process, etc. See Local Rule 100.4(a). All other submissions, unless otherwise specified in the rules, are to be filed electronically. Attorneys failing to electronically file when it is required are sent a stern warning from the Court. A deficiency notice is filed and becomes a part of the docket in that case. The Court may exercise its power to sanction parties who fail to follow the Local Rules with regard to electronic filing. Therefore, attorneys should not solely rely on the Clerk's Office or Court to advise them or warn them of violations of Local Rule 100 relating to e-filing through the CM/ECF system. It is important to understand the duties you have with regard to electronic notices and filing, especially if you do not frequently practice in the US District Court for the District of Oregon.

This article is intended to cover the fundamental responsibilities of a lawyer practicing in the District of Oregon as relating to the CM/ECF system. The technical requirements for using the system are detailed in the Court's CM/ECF User Manual, which can be found at <http://ord.uscourts.gov/ECF/CMECFHomePage.htm>.

1. LOCAL RULE 100 IS THE RULE THAT GOVERNS ELECTRONIC FILING IN THE US DISTRICT COURT FOR THE DISTRICT OF OREGON.

•Attorneys are advised to read Local Rule 100 in its entirety. Criminal practitioners may refer to Criminal Local Rule 3001, but it merely states that unless otherwise

directed by the Court, the provisions of Local Rule 100 apply to all criminal cases pending on or after March 1, 2004.

•Rules and policies may be different in other districts. While other federal courts use the CM/ECF software, their rules, practices and policies may be different for filing deadlines, judge copy requirements, etc. If you also practice in other federal courts, you are advised to contact that Clerk's Office to inquire about specific filing guidelines.

2. ALL LAWYERS ADMITTED TO PRACTICE IN THE DISTRICT OF OREGON MUST BECOME REGISTERED USERS ON THE CM/ECF SYSTEM AND MUST ALSO HAVE A PACER LOGIN AND PASSWORD.

•There is a difference between registration for the Court's CM/ECF system and registration for a PACER account. Registration with the Court's CM/ECF system and use of those logins and passwords allow an attorney access to the system for the purpose of electronically filing documents and for maintenance of their CM/ECF User Account.

•PACER is the electronic access service of the United States Judiciary that allows users to obtain case information (run reports and queries, view docket sheets and electronically filed documents) from all federal courts. Following registration with the PACER Service Center, the user will be sent a separate login and password for those purposes.

•Contact and other information for the PACER Service Center:

PACER Service Center
P.O. Box 780549
San Antonio, TX 78278-0549
1-800-676-6856
E-mail: PACER@psc.uscourts.gov
Internet site: <http://pacer.psc.uscourts.gov>

•There is no initial cost for registering with PACER. However, the Judicial Conference has set a fee of eight cents per page (with a \$2.40/30 page cap, except transcripts) for querying, viewing or downloading electronic case information, documents, or reports via the Internet.

•Where to find details about CM/ECF:

The CM/ECF project page site for the US District Court for the District of Oregon is found at <http://www.ord.uscourts.gov/ECF/CMECFHomePage.htm>.

•E-mail Account Requirement for a CM/ECF Registered User: To become a “registered user” all lawyers admitted to practice must maintain a current e-mail account “sufficient to receive services of electronic filings and court notices.” See Local Rule 100.2.

•Newly admitted attorneys to the Oregon Federal Bar will be concurrently registered in CM/ECF. Notification of an attorney’s CM/ECF logins and passwords will be sent via e-mail to the attorney shortly following their general admissions ceremony.

•Pro Hac Vice Attorneys: Attorneys granted permission to be admitted *pro hac vice* will also be concurrently registered in CM/ECF and will be sent their logins and passwords via e-mail.

•Unregistered Attorneys: Those attorneys who may have missed previous registration drives may submit the Attorney Account Registration Form found at <http://www.ord.uscourts.gov/ECF/CMECFHomePage.htm>.

•Lost or forgotten logins or passwords: Registered attorneys who have lost or forgotten their CM/ECF logins and passwords should visit the CM/ECF project page at: <http://www.ord.uscourts.gov/ECF/CMECFHomePage.htm> and click on the link for CM/ECF Login and Password Help. For PACER logins and passwords, contact the PACER Service Center.

•Exemptions from the registered user requirement are difficult to obtain. To obtain an exemption, an attorney must apply to the assigned judge in a particular case and show that they are without access to automation or the Internet and demonstrate “good cause.” See Local Rule 100.2(d)(1).

•Conventional filing by an exempt attorney: Even if an attorney is exempt from e-filing, that attorney must include a CD-ROM or diskette with every conventional filing containing a text searchable PDF version of those papers to be filed with the Court. See Local Rule 100.2(d)(2).

3. ONCE YOU REGISTER, YOU CONSENT TO BE SERVED ELECTRONICALLY FOR ALL NOTICES FROM THE COURT AND OTHER USERS EXCEPT SERVICE UNDER Fed. R. Civ. P. 4, 4.1, AND 45.

•Registered users will no longer be served conventionally. If a registered user appears in an action, the user is “deemed to consent to electronic service of all electronically filed documents by the Court or other registered users who have appeared in the action.” See Fed. R. Civ. P. 5(b)(2)(D). This means that, except for service of summons (Fed. R. Civ. P. 4), subpoenas, (Fed. R. Civ. P. 45) or other process (Fed. R. Civ. P. 4.1), once you register, you will not receive paper versions of electronically filed documents from the Court or from another registered user. See Fed. R. Civ. P. 5(b)(2)(D).

•Judgments are no longer mailed conventionally. In accordance with Fed. R. Civ. P. 5(b) and 77(d), on June 1, 2006, the Clerk’s Office discontinued mailing a paper copy of electronically filed judgments to registered users who have been successfully served via the CM/ECF system.

4. YOU ARE RESPONSIBLE FOR ENSURING THAT NOTICES FROM THE CM/ECF SYSTEM REACH YOU.

•You have a duty to advise the court of any change in address and maintain your CM/ECF User Account information. Local Rule 83.10(a) states that an attorney has the duty to advise the court of a change of address, including a change of their e-mail address. Local Rule 83.10(b) provides that such notice must be filed in pleading form and served on all parties to any pending action, or case on appeal. Commensurate with the filing of a notice of change of address, the attorney must also update his/her CM/ECF User Account. Instructions for maintaining this account are found at: <http://www.ord.uscourts.gov/ECF/2005Manual/Section15Atty.htm>.

•Verify that the CM/ECF systems messages are not "Spam". User Manual §6.4 provides that all registered users must verify that the e-mail notification messages from the address: info@ord.uscourts.gov (or from webmaster@teo.uscourts.gov for those users who have opted to receive summary e-mail messages) are not considered “Spam” and consequently blocked or quarantined by their e-mail service provider. Be sure that these web addresses and/or domains are marked as “safe” in your junk mail filter.

•Verify that e-mail provider will transmit failure or error messages. User Manual §6.4 provides that all registered users must verify that their e-mail service provider has a strict policy of transmitting a failure or error message back to the sender if there is a delay or problem in transmittal of an e-mail message.

•Court monitoring of failure messages is limited. As a courtesy in the District of Oregon, the Court monitors message failures, but does not respond to auto reply messages, or transient failure messages, like delay messages. The User Manual provides in §6.4(b) that recipients may be contacted if the Court receives a delivery failure message to complete notification and correct case records so that future messages may be successfully transmitted. The User Manual §6.6 also provides that the Clerk's Office may attempt to resend messages when delivery of an e-mail notification fails and/or contact opposing counsel to complete service in the conventional manner.

•E-mail failures may be noted on the case docket. A notation may be made on the case docket if the delivery to an attorney fails and court staff is unable to contact that attorney or co-counsel of record. See User Manual §6.6(f).

5. YOU ARE RESPONSIBLE FOR KEEPING COUNSEL OF RECORD INFORMATION CURRENT.

•Change of Address or Law Firm: If an attorney leaves your firm and there are District of Oregon cases in which he/she is displayed as counsel of record, as co-counsel, you need to file the proper notice with the Court (like a Notice of Withdrawal or Notice of Substitution of Counsel) so that counsel information is kept current. See Local Rule 83.11.

6. ELECTRONICALLY FILED ORDERS HAVE THE SAME FORCE AND EFFECT AS IF THEY WERE IN PAPER FORM.

•Orders of the Court: An 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 on the docket in a conventional manner. See Local Rule 100.9.

•Text Only Orders: Orders may be issued as "text only" entries on the docket, without an attached document. See Local Rule 100.9.

7. ATTACHMENTS AND EXHIBITS ARE FILED ELECTRONICALLY, WITH SOME EXCEPTIONS.

•Mandatory Electronic Filing became effective on September 1, 2006. The Court and all registered users are required to electronically file all pleadings, documents and

other papers in all pending civil and criminal cases, unless otherwise specified by the rules or further order of the Court. See Local Rule 100.1.

•Case Initiation Exception: Initial case papers must still be filed conventionally. These filings, however, must be accompanied by a text searchable PDF version of every paper, including scanned versions of related state court documents in removal actions, on a CD-ROM or diskette. See Local Rule 100.4.

•Demonstrative or Oversized Exhibits Exception: There is an exception for demonstrative or oversized exhibits and these may be filed conventionally. See Local Rule 100.4(c)(3).

•Trial Exhibits Exception: These documents are to be delivered or submitted as ordered by the assigned judge. See Local Rule 100.4(c)(4).

•Sealed and In-Camera Documents Exception: Attorneys must file sealed and in-camera documents conventionally. See Local Rules 3.9, 3.10, 10.3 and Local Rule 100.4(e)(2).

•Individual Consent to Jurisdiction Before a United States Magistrate Exception: These documents must be filed conventionally. See Local Rule 100.4(e)(3).

•Social Security Administrative Record Exception: Currently, Social Security Administrative Records are filed conventionally. See Local Rule 100.4(e)(4).

•Administrative Records: Other types of administrative records, like APA, IDEA, ERISA and INS administrative records, may be conventionally filed and served without prior court approval. See Local Rule 100.4(f).

•HIPAA Protected Information Exception: Documents containing individually identifiable HIPAA protected information must be filed conventionally. See Local Rule 100.4(e)(5).

•Excerpt of Record Rule: The Court requires that only those excerpts of referenced documents that are directly germane to the matter be electronically filed. If a registered user files excerpts, it is without prejudice to the right to timely file additional excerpts or the complete document. See Local Rule 100.4(c)(2).

•Notices of Appeal: Notices of Appeal may be filed electronically, but any required fee must be paid to the District Court within 3 days from the date of electronic filing. See Local Rule 100.4(d).

8. ATTORNEYS MUST DELIVER A JUDGE'S COPY OF CERTAIN ELECTRONICALLY FILED DOCUMENTS TO THE COURT CLERK WITHIN 3 DAYS AFTER ELECTRONIC FILING.

•**Civil Cases:** Local Rule 100.4(b)(1) imposes this requirement on all dispositive motions, motions for injunctive relief, and any documents in excess of 5 pages.

•**Criminal Cases:** Local Rule 100.4(b)(2) imposes this requirement on all motions in limine, motions to dismiss, suppression motions, and any documents in excess of 5 pages.

9. YOU ARE RESPONSIBLE FOR MAKING SURE ELECTRONIC SERVICE ON THE COURT AND OTHER PARTIES IS PERFECTED.

•**Effective Completion of Service:** Electronic service is complete upon transmission, however, electronic service isn't considered "effective service" if the serving party learns that the filing did not reach the person to be served. See Local Rule 100.7(a)(1).

•**Confirmation Receipt:** The Notice of Electronic Filing (NEF) generated by the system may be used as the confirmation of service upon all of the parties who were served electronically and to satisfy the notice requirements of Fed. R. Civ. P. 5(b) and 77(d). See Local Rule 100.7(a)(1).

•**Notice of Electronic Filing:** Except for a document filed under seal, the Notice of Electronic Filing (NEF) generated by the CM/ECF system includes: a hyperlink to the electronic filing; the filing date and time; the name(s) of every registered user and secondary addressee to whom the notice was transmitted; and the names of every case participant who was not sent electronic notice of the filing. Those individuals whose names fall below this line and are not sent notice electronically are to be conventionally served.

•**Failure of Electronic Service:** If electronic service fails for a particular party, the registered user must then serve the document conventionally and file a certificate of service with the Clerk's Office. See Local Rule 100.7(b)(2). This rule also applies to documents filed conventionally because they are under seal. See Local Rules 100.7(b)(1) and (3).

10. THERE IS HELP IN GETTING UP TO SPEED ON THE CM/ECF SYSTEM.

•**CM/ECF User Manual:** Electronic filing requirements

are described in detail in the CM/ECF User's Manual at <http://www.ord.uscourts.gov/ECF/CMECFHomePage.htm>. This manual contains a lot of the technical information attorneys need to use the system, like hardware, and software requirements, login information, instructions for completing transactions on the system, and other important information. From time to time, this manual is updated to conform to the evolving CM/ECF system software releases or new court procedures. Notice of updates will be posted on the Court's Web site at: <http://www.ord.uscourts.gov>.

•**On-line Tutorial:** The Court offers an on-line tutorial for newly registered users and their staff at <http://www.ord.uscourts.gov/ecf/Tutorial/index.html>. No login or password is required to access this tutorial.

•**Clerk's Office Assistance:** Your new best friend is the docket clerk and/or courtroom deputy clerk associated with your case. If you have any questions about electronic filing, event selection or filing errors and corrections, start by contacting the docket clerk for the judge associated with the case. The name of that person is found on the Case Assignment Notice. Alternatively, you may call the Divisional Office Intake Counter, and the clerk will assist in directing your call. For Portland cases call 503-326-8008 (civil) or 503-326-8003 (criminal). For Eugene cases call 541-431-4100, and for Medford cases call 541-608-8777.

Electronic filings may be made at any time, however, Clerk's Office staff may only be available to assist you during normal business hours so you may wish to plan accordingly.

•**Internet On-line Help:** Users may also send general questions about the CM/ECF system via e-mail to info@ord.uscourts.gov. Caution: This address may NOT be used for filing any pleadings, documents, or for sending any other official correspondence to the Court.

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