

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

**NOTICE OF PROPOSED LOCAL RULE CHANGE
AND OPPORTUNITY TO COMMENT**

Pursuant to Local Civil Rule 1.1(b) and Local Criminal Rule 1.1, the United States District Court for the District of Columbia is publishing for comment a proposed change to five Local Rules.

The proposed rule changes, which are set forth below, will be adopted and become effective unless modified or withdrawn by the Court after receiving comments from organized bar associations, members of the bar and public. Such comments must be made in writing within 45 days of the publication of this Notice and should be addressed to Kevin M. Hodges, Esq., Chairman, Advisory Committee on Local Rules, Williams & Connolly LLP, 725 Twelfth St., N.W., Washington, DC 20005.

Angela D. Caesar, Clerk

[New language is underlined, old language is stricken]

LCvR 5.1

FORM AND FILING OF DOCUMENTS

(a) CORRESPONDENCE WITH THE COURT.

Except when requested by a judge, correspondence shall not be directed by the parties or their attorneys to a judge, nor shall papers be left with or mailed to a judge for filing.

(b) FACSIMILE OR EMAIL.

No document shall be transmitted to the Clerk for filing by means of electronic facsimile or email transmission except with express leave of Court.

(c) NAME AND ADDRESS OF PARTIES AND ATTORNEYS.

(1) The first filing by or on behalf of a party shall have in the caption the name and full residence address of the party. Where a person is sued in an official capacity, the person's official address shall be used. If the party is appearing

pro se, the caption shall also include the party's telephone number. Those filing *pro se in forma pauperis* must provide in the caption the name and full residence address or official address of each party. Failure to provide the address information within 30 days of filing may result in the dismissal of the case against the defendant. All documents signed by an attorney shall contain the name, address, telephone number, and D.C. Bar identification number of the attorney if the attorney is a member of the D.C. Bar. All attorneys listed on any document who are members of the D.C. Bar must include their D.C. Bar identification numbers regardless of whether they sign the document. Notice of a change in address or telephone number of an attorney or a party not represented by an attorney must be filed within 14 days of the change. Unless changed by notice filed with the Clerk, the address and telephone number of a party or an attorney noted on the first filing shall be conclusively taken as the last known address and telephone number of the party or attorney.

- (2) By signing a document that is presented to the Court, an attorney is certifying that the attorney, and all other attorneys appearing with the attorney on the document, are members of, or have a pending application for admission to, the Bar of this Court, or have complied with LCvR 83.2(c) or (d), or are covered by LCvR 83.2(e) as counsel for the United States.

COMMENT TO LCvR 5.1(c) (1) and (2): Section (c)(1) was amended to make clear that the reference to the requirement that all documents include "the bar identification number of the attorney" requires a D.C. Bar identification number. Because members of the Bar of this Court are not assigned bar identification numbers, Section (c)(2) was added to assist the Clerk's Office in verifying the bar membership status of attorneys who appear in this Court.

(d) FORM OF DOCUMENTS.

Every document shall be typed (double spaced) using a standard 8 ½ by 11 inch word processing format (submitted electronically to the Court in PDF format) and shall contain a heading under the caption describing the nature of the document. The case number on every document shall be followed by the initials of the judge to whom the case has been assigned. If the case has been referred to a magistrate judge, the magistrate judge's initials shall also be shown. Any exhibit or attachment to documents shall reflect the number of the case in which it is filed. Any document submitted to the Court in paper format shall be submitted unfolded and produced on opaque 8 ½ by 11 inch white paper using a clear black image.

All pleadings shall appear in 12-pt. font and shall be double-spaced. Footnotes, which shall not be excessive, shall also appear in 12-pt. font.

(e) ATTACHMENTS TO PLEADINGS.

No complaint, amended complaint, counterclaim, cross claim or third party complaint

shall have appended thereto any document that is not essential to determination of the action. Whenever any such pleading is sought to be filed with an attached document, the Clerk shall bring this Rule to the attention of the person filing the pleading.

(f) VERIFICATION

Whenever any matter is required or permitted by law or by rule to be supported by the sworn written statement of a person (other than a deposition, oath of office, or oath required to be taken before a specified official other than a notary public), the matter may, with the same force and effect, be supported by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed as true under penalty of perjury, and dated, in substantially the following form:

- (1) If executed without the United States "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

- (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

(g) NONCONFORMING DOCUMENTS.

If Aa document ~~that~~ does not conform to the requirements of this Rule and Fed. R. Civ. P. 10(a), ~~shall not be accepted for filing, the Clerk will notify the filing party of the identified deficiency and request that the deficiency be corrected by the end of the next business day. If a deficiency is not corrected by the end of the next business day, the Clerk will forward the pleading to the assigned judge with notice of the identified deficiency and a recommendation, if appropriate, that the pleading be stricken for failure to comply with applicable rules.~~

(h) SEALED OR CONFIDENTIAL DOCUMENTS.

- (1) Absent statutory authority, no case or document may be sealed without an order from the Court. A document filed with the intention of it being sealed in an otherwise public case must be filed by electronic means in a manner authorized by the Clerk and shall be accompanied by a motion to seal. The document will be treated as sealed, pending the outcome of the ruling on the motion. Failure to file a motion to seal will result in the document being placed on the public record.
- (2) When it is necessary to file a sealed document in paper form, the document

must be submitted to the Clerk's Office with an electronic copy in a format deemed by the Clerk's Office to be compatible with CM/ECF filing. The document shall be submitted to the Clerk securely sealed in an envelope/box. The envelope/box containing such a document shall contain a conspicuous notation that states "DOCUMENT UNDER SEAL" or "DOCUMENTS SUBJECT TO PROTECTIVE ORDER," or the equivalent. The face of the envelope/box shall also contain the title of the Court, the case caption, the case number, and a descriptive title of the document, unless such information is to be or has been included among the information ordered sealed. The face of the envelope/box shall also contain the date of any order or the reference to any statute permitting the item to be sealed.

- (3) Filing a sealed document in a totally sealed case, or filing a sealed document in paper format in an otherwise public case where electronic filing cannot be effected, must be made in the Clerk's Office during the business hours of 9:00 a.m. and 4:00 p.m. daily except Saturdays, Sundays and legal holidays. Filing a sealed document at the security desk is prohibited because the Security Officers are not authorized to accept this material.

LCvR 5.4

CASES ASSIGNED TO CASE MANAGEMENT/ELECTRONIC CASE FILING (CM/ECF) SYSTEM

(a) DOCUMENTS TO BE FILED BY ELECTRONIC MEANS

Except as otherwise provided in this Rule 5.4, all documents to be filed with the Court must be filed by electronic text-searchable means in a manner authorized by the Clerk.

(b) OBTAINING AND USING ELECTRONIC FILING PASSWORD; SIGNATURE; CONSENT TO SERVICE BY ELECTRONIC MEANS

- (1) An attorney must obtain a CM/ECF user name and password from the Clerk in order to enter an appearance electronically, to file documents electronically with the Court, or to receive documents filed electronically by other parties or matters entered electronically on the docket by the Court.
- (2) A *pro se* party may obtain a CM/ECF user name and password from the Clerk with leave of Court. Whether leave of Court should be granted is within the discretion of the judge to whom the case is assigned. To obtain leave of Court, the *pro se* party must file a written motion entitled "Motion for CM/ECF User Name and Password," describing the party's access to the internet, confirming the capacity to file documents and receive filings electronically on a regular basis, and certifying that he or she either has successfully completed the entire Clerk's Office on-line tutorial or has been permitted to file electronically in

other federal courts.

- (3) A CM/ECF password may be used only by the person to whom it is assigned, or, in the case of an attorney, by that attorney or an authorized employee or agent of that attorney's law office or organization.
- (4) The use of a CM/ECF password to login and submit documents creates an electronic record that operates and serves as the signature of the person to whom the password is assigned for all purposes under the Federal Rules of Civil Procedure and the Local Rules of this Court.
- (5) Electronically filing a document that contains a declaration, verification, certificate, sworn statement, oath or affidavit certifies that the original signed document is in the possession of the attorney or *pro se* party responsible for the filing and that it is available for review upon request by a party or by the Court.
- (6) An attorney or *pro se* party who obtains a CM/ECF password consents to electronic service of all documents, subsequent to the original complaint, that are filed by electronic means pursuant to Fed. R. Civ. P. 5(b)(2)(E). Such counsel and *pro se* parties are responsible for monitoring their e-mail accounts, and, upon receipt of notice of an electronic filing, for retrieving the noticed filing.

(c) FILING BY ELECTRONIC MEANS

- (1) Filing a document electronically following procedures set forth in this Rule 5.4 constitutes filing for all purposes under the Federal Rules of Civil Procedure and the Local Rules of this Court.
- (2) A person filing a document by electronic means is responsible for insuring the accuracy of the official docket entry generated by the CM/ECF software.
- (3) Any document, order, or notice filed or docketed electronically by the Court or by the Clerk shall have the same binding authority as one filed on paper.

(d) SERVICE

- (1) Electronically filing a document operates to effect service of the document on *pro se* parties who have obtained CM/ECF passwords and on all counsel. *Pro se* parties who have not obtained CM/ECF passwords must serve and be served as otherwise provided in Fed. R. Civ. P. 5(b).
- (2) The requirement of a certificate of service or other proof of service is satisfied

by the automatic notice of filing sent by the CM/ECF software to *pro se* parties who have obtained CM/ECF passwords and to counsel. A separate certificate of service or other proof of service showing that a paper copy was served on a party is required when that party does not receive electronic notification of filings.

(e) EXCEPTIONS TO REQUIREMENT OF ELECTRONIC FILING

- (1) Every unsealed document (including an administrative record or a record of state court proceedings) must be filed electronically. Every document filed under seal in a totally sealed case shall be filed in paper form accompanied by an electronic copy in a format deemed compatible by the Clerk's Office with CM/ECF filing in conformity with the requirements of LCvR 5.1. Any document, exhibit, or attachment, including sealed material that (A) is not in a format that readily permits electronic filing, such as a map, chart or DVD, or (B) is illegible when scanned into electronic format, is to be maintained in the possession of the attorney or *pro se* party responsible for the filing. Such a filing shall be made available for a party or the Court and must be identified in a Notice of Filing filed with the Court. A document or item filed pursuant to this subsection shall be served, if it is necessary to serve it, by mail or by hand delivery, unless the parties have otherwise agreed.
- (2) A party appearing *pro se* shall file with the Clerk and serve documents in paper form and must be served with documents in paper form, unless the *pro se* party has obtained a CM/ECF password.

(f) PRIVACY REQUIREMENTS

The following personal identifiers shall be excluded, or redacted where inclusion is necessary, from all electronically filed documents unless otherwise ordered by the Court.

- (1) Social Security numbers. If an individual's Social Security number must be included in a pleading, only the last four digits of that number should be used.
- (2) Names of minor children. If the involvement of a minor child must be mentioned, only the initials of that child should be used.
- (3) Dates of birth. If an individual's date of birth must be included in a pleading, only the year should be used.
- (4) Financial account numbers. If a financial account number is relevant, only the last four digits should be used.

A party wishing to file a document containing unredacted personal identifiers listed in

LCvR 5.4 (f) (1)-(4) may file an unredacted document under seal. This document shall be retained by the Court as part of the record.

(g) **INCORRECT AND NONCONFORMING FILINGS AND TECHNICAL DIFFICULTIES**

(1) If a complaint filed electronically does not conform to the requirements of this Rule, LCvR 5.1 and Fed. R. Civ. P. 10(a), the Clerk will notify the filing party of the identified deficiency and request that the deficiency be corrected by the end of the next business day. If the deficiency is not corrected by the end of the next business day, the Clerk will forward the complaint to the assigned judge with notice of the identified deficiency and a recommendation, if appropriate, for sua sponte dismissal for failure to comply with applicable rules.

~~(1)~~(2) The Clerk may direct a party or non-party to re-file a document that has been incorrectly filed, or to correct an erroneous or inaccurate docket entry.

~~(2)~~(3) If a *pro se* party who has been given leave to file electronically or an attorney presents an unsealed document for filing in paper form, the Clerk may direct the *pro se* party or attorney to file the document electronically or present it in a format deemed by the Clerk's Office to be compatible with CM/ECF filing. The document will be deemed filed on the date it was first presented for filing if, no later than the next business day, the *pro se* party or attorney files the document electronically or presents it in a format deemed by the Clerk's Office to be compatible with CM/ECF filing.

(4) The inability to complete an electronic filing because of technical problems may constitute "cause" for an order enlarging time or "excusable neglect" for the failure to act within the specified time, within the meaning of Fed. R. Civ. P. 6(b). A filer encountering technical problems with a CM/ECF filing shall immediately notify the Clerk's Office of the problem either by email or by telephone, followed promptly by written confirmation. This Rule does not provide authority to extend statutory and jurisdictional time limits.

COMMENT to LCvR 5.4(a): This Rule does not apply to cases that are filed in paper form and are not assigned to the CM/ECF system. Eventually, however, all new civil cases will be assigned to the CM/ECF system.

COMMENT TO LCvR 5.4(c)(3): An opinion, memorandum, order, judgment, default, or other notice issued electronically by the Court or by the Clerk bears an electronic "signature" and does not require a handwritten signature to be official and binding. Also, an order or notice (such as a minute entry or

scheduling notice) entered on the docket without an attached document is official and binding.

COMMENT to LCvR 5.4(g): *Notice to the Clerk that technical problems interfered with electronic filing can provide a contemporaneous record in support of a party's motion under Fed. R. Civ. P. 6(b) for an order enlarging time. Only the Court, not the Clerk, may enlarge time. However, if the filing deadline is statutory and jurisdictional, electronic filers should take care not to wait until the last minute to file since not even technical difficulties will provide a means for the Court to extend the deadline.*

LCvR 11.1

NAMES AND ADDRESSES OF PARTIES AND ATTORNEYS

The first filing by or on behalf of a party shall have in the caption the name and full residence address of the party. Where a person is sued in an official capacity, the person's official address shall be used. If the party is appearing *pro se*, the caption shall also include the party's telephone number. Those filing *pro se in forma pauperis* must provide in the caption the name and full residence address or official address of each party. Failure to provide the address information within 30 days upon filing may result in the dismissal of the case against the defendant. All papers signed by an attorney shall contain the name, address, telephone number, and bar identification number of the attorney. Notice of change in address or telephone number of an attorney or a party not represented by an attorney must be filed within 14 days of the change. Unless changed by notice filed with the Clerk, the address and telephone number of a party or an attorney noted on the first filing shall be conclusively taken as the last known address and telephone number of the party or attorney.