

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS

FILED

JUN 24 2021

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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY MFO
DEPUTY CLERK

ORDER AMENDING LOCAL COURT CIVIL RULES

This order adopts and enacts proposed amendments to the Local Court Civil Rules for the United States District Court, Western District of Texas. Attached to this order are true and correct copies of the proposed amendments to the local court rules, as well as the proposed amendments to the rules' appendices and to the Administrative Policies and Procedures for Electronic Filing in Civil and Criminal Cases.

In accordance with Rule 83 of the Federal Rules of Civil Procedure, these amendments were unanimously approved by the district judges of this Court after being posted for 30 days for review and comment by the bar. The Court was recently informed by the Office of the Circuit Executive for the Fifth Circuit that the Rules Committee, acting for and on behalf of the Judicial Council of the Fifth Circuit, completed its examination and review of the amendments and has approved the amendments.

ACCORDINGLY, IT IS ORDERED that the proposed amendments to the Local Court Civil Rules, including the amendments to the appendices and to the Administrative Policies and Procedures for Electronic Filing in Civil and Criminal Cases, are adopted by the United States District Court for the Western District of Texas. The amended local rules become effective upon signing and entry of this order.

IT IS FURTHER ORDERED that the Clerk of Court make a copy of the amended Local Court Civil Rules for the United States District Court, Western District of Texas available in every Clerk's office in the district and post the amended rules to this Court's website.

SIGNED this 24 day of June, 2021.



Orlando L. Garcia
Chief United States District Judge

Acknowledgements

These Local Court Rules for the United States District Court of the Western District of Texas were prepared by the Local Court Rules Committee assembled by Chief Judge Orlando L. Garcia and the Judges of the Western District of Texas. These Rules have been approved by a unanimous vote of the Court. Chaired by the late United States District Judge Philip R. Martinez, who extolled excellent leadership of the Committee, and worked diligently to keep the Committee on task, while making the work a real pleasure. He will be greatly missed. The members of the Committee are listed below:

JUDICIAL OFFICERS

The Late Honorable Philip R. Martinez, U.S. District Judge, Chair
Honorable Lee Yeakel, U.S. District Judge
Honorable Elizabeth S. (Betsy) Chestney, U.S. Magistrate Judge

MEMBERS OF THE BAR

AUSTIN DIVISION

Robert C. "Robby" Alden
Marcy H. Greer

DEL RIO DIVISION

Jacques L. De La Mota

EL PASO DIVISION

George Andritsos
Noemi V. Lopez
Mark N. Osborn

MIDLAND/ODESSA AND PECOS DIVISIONS

Joseph A. Baker

SAN ANTONIO DIVISION

Stephen P. Allison
Leslie S. Hyman

WACO DIVISION

Dan MacLemore

REPORTER

Professor Steven Goode, The University of Texas School of Law

LOCAL COURT CIVIL RULES

With Proposed Amendments

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WESTERN DISTRICT OF TEXAS

The **UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS** comprises seven divisions.

1. The **AUSTIN DIVISION** comprises the following counties: Bastrop, Blanco, Burleson, Burnet, Caldwell, Gillespie, Hays, Kimble, Lampasas, Lee, Llano, Mason, McCulloch, San Saba, Travis, Washington and Williamson.

Court for the Austin Division shall be held at Austin. The addresses and telephone numbers for the residing U.S. District Judges and the U.S. District Clerk at Austin are as follows:

Hon. Lee Yeakel
U.S. District Judge
501 West 5th Street, Suite 7300
Austin, Texas 78701
(512) 916-5756

Hon. Robert L. Pitman
U.S. District Judge
501 West 5th Street, Suite 5300
Austin, Texas 78701
(512) 391-8824

Hon. James R. Nowlin
Senior Judge
501 West 5th Street, Suite 6400
Austin, Texas 78701
(512) 916-5675

Hon. Sam Sparks
Senior Judge
501 West 5th Street, Suite 4120
Austin, Texas 78701
(512) 916-5230

U.S. District Clerk
U.S. Courthouse
501 West 5th Street, Suite 1100
Austin, Texas 78701
(512) 916-5896

2. The **DEL RIO DIVISION** comprises the following counties: Edwards, Kinney, Maverick, Terrell, Uvalde, Val Verde and Zavala.

Court for the Del Rio Division shall be held at Del Rio. The addresses and telephone numbers for the residing U.S. District Judge and the U.S. District Clerk at Del Rio are as follows:

Hon. Alia Moses
U.S. District Judge
111 East Broadway, Room A-202
Del Rio, Texas 78840
(830) 703-2038

U.S. District Clerk
U.S. Courthouse
111 East Broadway, Room 100
Del Rio, Texas 78840
(830) 703-2054

3. The **EL PASO DIVISION** comprises the following counties: El Paso and Hudspeth.

Court for the El Paso Division shall be held at El Paso. The addresses and telephone numbers for the residing U.S. District Judges and the U.S. District Clerk at El Paso are as follows:

Hon. Kathleen Cardone
U.S. District Judge
Albert Armendariz, Sr. U.S. Courthouse
525 Magoffin Avenue, Suite 561
El Paso, Texas 79901
(915) 534-6740

Hon. Frank Montalvo
U.S. District Judge
Albert Armendariz, Sr. U.S. Courthouse
525 Magoffin Avenue, Suite 461
El Paso, Texas 79901
(915) 534-6600

Hon. David C. Guaderrama
U.S. District Judge
Albert Armendariz, Sr. U.S. Courthouse
525 Magoffin Avenue, Suite 361
El Paso, Texas 79901
(915) 534-6005

Hon. David Briones
Senior Judge
Albert Armendariz, Sr. U.S. Courthouse
525 Magoffin Avenue, Suite 761
El Paso, Texas 79901
(915) 534-6744

U.S. District Clerk
Albert Armendariz, Sr. U.S. Courthouse
525 Magoffin Avenue, Suite 105
El Paso, Texas 79901
(915) 534-6725

4. The **PECOS DIVISION** comprises the following counties: Brewster, Culberson, Jeff Davis, Loving, Pecos, Presidio, Reeves, Ward and Winkler.

Court for the Pecos Division shall be held at Pecos. The address and telephone number for the U.S. District Clerk at Pecos is:

U.S. District Clerk
Lucius D. Bunton, III U.S. Courthouse
410 South Cedar Street
Pecos, Texas 79772
(432) 445-4228

5. The **SAN ANTONIO DIVISION** comprises the following counties: Atascosa, Bandera, Bexar, Comal, Dimmit, Frio, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Medina, Real and Wilson.

Court for the San Antonio Division shall be held at San Antonio. The addresses and telephone numbers for the residing U.S. District Judges and the U.S. District Clerk at San Antonio are as follows:

Hon. Orlando L. Garcia
Chief U.S. District Judge
John H. Wood, Jr. U.S. Courthouse
655 E. Cesar E. Chavez Blvd.
San Antonio, Texas 78206
(210) 472-6565

Hon. Fred Biery
U.S. District Judge
John H. Wood, Jr. U.S. Courthouse
655 E. Cesar E. Chavez Blvd.
San Antonio, Texas 78206
(210) 472-6505

Hon. Xavier Rodriguez
U.S. District Judge
John H. Wood, Jr. U.S. Courthouse
655 E. Cesar E. Chavez Blvd.
San Antonio, Texas 78206
(210) 472-6575

Hon. Jason Pulliam
U.S. District Judge
John H. Wood, Jr. U.S. Courthouse
655 E. Cesar E. Chavez Blvd.
San Antonio, Texas 78206
(210) 472-6570

Hon. David A. Ezra
Senior Judge
John H. Wood, Jr. U.S. Courthouse
655 E. Cesar E. Chavez Blvd.
San Antonio, Texas 78206
(210) 472-5870

U.S. District Clerk
John H. Wood, Jr. U.S. Courthouse
655 E. Cesar E. Chavez Blvd., Room
G-65
San Antonio, Texas 78206
(210) 472-6550

6. The **WACO DIVISION** comprises the following counties: Bell, Bosque, Coryell, Falls, Freestone, Hamilton, Hill, Leon, Limestone, McLennan, Milam, Robertson and Somervell.

Court for the Waco Division shall be held at Waco. The addresses and telephone numbers for the residing U.S. District Judge and the U.S. District Clerk at Waco are as follows:

Hon. Alan D. Albright
U.S. District Judge
U.S. Courthouse
800 Franklin Avenue
Room 301
Waco, Texas 76701
(254) 750-1519

U.S. District Clerk
U.S. Courthouse
800 Franklin Avenue
Room 380
Waco, Texas 76701
(254) 750-1501

7. The **MIDLAND/ODESSA DIVISION** comprises the following counties: Andrews, Crane, Ector, Martin, Midland and Upton.

Court for the Midland/Odessa Division shall be held at Midland. Court may be held, in the discretion of the Court, in Odessa, when courtroom facilities are made available at no expense to the government. The addresses and telephone numbers for the residing U.S. District Judges and the U.S. District Clerk at Midland are as follows:

Hon. David Counts
U.S. District Judge
George H.W. Bush and George W. Bush U.S. Courthouse
200 E. Wall, Room 301
Midland, Texas 79701
(432) 686-4020

Hon. Robert A. Junell
Senior Judge
George H.W. Bush and George W. Bush U.S. Courthouse
200 E. Wall, Room 317
Midland, Texas 79701
(432) 686-4020

U.S. District Clerk
George H.W. Bush and George W. Bush U.S. Courthouse
200 E. Wall, Room 301
Midland, Texas 79701
(432) 686-4001

RULE CV-1. SCOPE OF RULES

(a) The rules of procedure in any proceeding in this court shall be prescribed by the laws of the United States, the rules of the Supreme Court of the United States, any applicable rules of the United States Court of Appeals for the Fifth Circuit, and these rules.

(b) Where in any proceeding or in any instance there is no applicable rule of procedure, a judge may prescribe one.

(c) These rules may be cited as Local Court Rules.

(d) Unless otherwise provided, any revision to these rules applies to all cases pending on or filed after the date of the revision.

(e) Any judge of this court may waive any requirement of these rules regarding the administration of that judge's docket.

(f) All parties are encouraged to review the materials from the clerk's office for any rules or requirements adopted by any judge pursuant to this provision. The clerk must post any such rules or requirements on the court website.

RULE CV-3. COMMENCEMENT OF ACTION

(a) Civil Cover Sheet. The clerk is authorized and instructed to require a complete and executed AO Form JS 44, Civil Cover Sheet, which shall accompany each civil case to be filed. If the filing of a civil case is not accompanied by a complete and executed Civil Cover Sheet, the clerk must accept the case for filing, but must promptly inform the filing party that the filing party must complete and execute the Civil Cover Sheet. If the filing party fails to do so not later than 7 days after being informed, the clerk must so advise the court. An unrepresented person who files a civil case or a person who, when filing a civil case, is in the custody of a civil, state, or federal institution, need not complete and execute the Civil Cover Sheet. All parties are required to advise the court of any related cases, through means of the Civil Cover Sheet or otherwise.

(b) Habeas Corpus Petitions Under 28 U.S.C. §§ 2241 and 2254 and Post-Conviction Motions Under 28 U.S.C. § 2255.

(1) Petitions for writs of habeas corpus filed under 28 U.S.C. §§ 2241 and 2254 and post-conviction motions filed under 28 U.S.C. § 2255 shall be in writing, signed, and verified under penalty of perjury. *See* 28 U.S.C. § 2242.

(2) Such petitions and motions shall be made on forms supplied by the court or set forth in detail all the information requested in the court's forms.

(3) A § 2241 petition must be filed in the division that includes the county in which the petitioner is in custody. A § 2254 petition must be filed in the division that includes the county in which the petitioner was convicted and sentenced or is in custody. A § 2255 motion must be filed in the division in which the movant was tried and sentenced. A list of divisions and the counties they cover appears in the Introduction to these Local Court Rules.

RULE CV-5. FILING REQUIREMENTS

(a) **Filing Requirements.** Documents filed by electronic means must comply with the *Administrative Policies and Procedures for Electronic Filing in Civil and Criminal Cases*, available on the court website.

(b) **Proposed Orders.** Proposed orders must be filed through the clerk's office and not sent directly to the judge.

(c) **Nonconforming Documents.** If a document that fails to conform with these rules is submitted, the clerk shall file the document and promptly inform the filing party that the document is not in compliance with these rules.

RULE CV-5.2. DOCUMENTS FILED UNDER SEAL

(a) In limited circumstances, a party may need to submit a sealed document for consideration by the court. For purposes of this rule, the term “sealed document” may include any pleading, motion, paper, physical item, or other submission that the Federal Rules of Civil Procedure or these rules permit or require to be filed. If the sealed document is associated with a pleading, motion, or other submission requesting or opposing relief from the court, as in the case of an exhibit to such submission, the sealed document must not be filed with the submission. Instead, the sealed document must be separately filed as an exhibit to a motion requesting permission to keep the document under seal (a “sealing motion”). All documents intended to be kept under seal must be filed as an exhibit to a sealing motion.

(b) Motions to keep pleadings, motions, or other submissions requesting or opposing relief from the court under seal are disfavored. The court expects parties to draft such submissions in a manner that does not disclose confidential information. Parties should consider redacting confidential information not critical to the filing. When it is necessary to support the filing, confidential information should be included in an appendix filed under seal and generally referenced, without being revealed, in the filing.

(c) The sealing motion must identify the submission the sealed document is associated with, if applicable. The sealing motion and the accompanying sealed document must be filed under seal, state the factual basis for the requested sealing order, and otherwise comply with the requirements of Rules CV-7 and CV-10 and the procedures governing electronic or paper filings, as applicable to the submission. The court expects parties to draft sealing motions in a manner that does not disclose confidential information because the sealing motion, without the sealed document, may subsequently be unsealed by court order.

(d) If the court grants a sealing motion, the clerk will keep the sealed document under seal unless otherwise ordered by the court, and, if appropriate, the clerk shall link the sealed document to its associated pleading, motion, or other submission. The court may order that the sealing motion, without the sealed document, be unsealed. If the court denies a sealing motion, the clerk, on order of the court, shall delete the sealed document.

(e) Counsel for a party moving to keep any document under seal is responsible for serving a copy of the sealed document on all counsel of record. Counsel for a party submitting documents containing redactions is responsible for serving an unredacted copy of the document on all counsel of record, except that material may be left redacted if it is protected from disclosure by an applicable statute or order. Counsel may not use the court’s electronic notice facilities to serve the sealed or unredacted document.

CV-6
[RULE DELETED]

RULE CV-7. PLEADINGS ALLOWED; FORM OF MOTIONS

(a) Generally. Unless made during a hearing or trial, a pleading, motion, or other submission must meet the requirements of Rule CV-10.

(b) Leave to File. When a motion for leave to file a pleading, motion, or other submission is required, an executed copy of the proposed pleading, motion, or other submission shall be filed as an exhibit to the motion for leave. Unless otherwise ordered, if the motion for leave is granted, the clerk shall promptly file the pleading, motion, or other submission. After leave is granted, any applicable time limits triggered by the pleading, motion, or other submission shall run from the filing of the pleading, motion, or other submission by the clerk or otherwise.

(c) Motions.

(1) Generally. Any legal authority in support of a motion must be cited in the motion, and not in a separate brief. An appendix may be filed with the motion specifying any factual basis relied upon. If filed, the appendix must include all affidavits, deposition transcripts, or other documents supporting the relied upon facts. All motions must state the grounds therefor and cite any applicable rule, statute, or other authority justifying the relief sought.

(2) Page Limits. Unless otherwise authorized by the court, discovery and case management motions are limited to 10 pages, and other motions are limited to 20 pages. These page limits are exclusive of the caption, the signature block, any certificate, and any accompanying documents.

(d) Responses.

(1) Generally. Any party opposing a motion shall file a response and supporting documents as are then available. The response must contain a concise statement of the reasons for opposition to the motion and citations of the legal authorities on which the party relies.

(2) Time Limits. A response to a discovery or case management motion shall be filed not later than 7 days after the filing of the motion. A response to other motions shall be filed not later than 14 days after the filing of the motion, except as provided by Rule CV-15. If there is no response filed within the time period prescribed by this rule, the court may grant the motion as unopposed.

(3) Page Limits. Unless otherwise authorized by the court, a response to a discovery or case management motion is limited to 10 pages and a response to other motions is limited to 20 pages. These page limits are exclusive of the caption, the signature block, any certificate, and any accompanying documents.

(e) Replies.

(1) Generally. A party may file a reply in support of a motion. Absent leave of court, no further submissions on the motion are allowed.

(2) Time Limit. A reply in support of a motion shall be filed not later than 7 days after the filing of the response to the motion. The court need not wait for a reply before ruling on a motion.

(3) Page Limits. Unless otherwise authorized by the court, a reply in support of a discovery or case management motion is limited to 5 pages and a reply in support of other motions is limited to 10 pages. These page limits are exclusive of the caption, the signature block, any certificate, and any accompanying documents.

(f) Proposed Orders. A proposed order is required for all discovery and case management motions.

(g) Conference Required. The court may refuse to hear or may deny a nondispositive motion unless the movant advises the court within the body of the motion that counsel for the parties have conferred in a good-faith attempt to resolve the matter by agreement and certifies the specific reason that no agreement could be made. If there is any ambiguity about whether a motion is dispositive or nondispositive, the parties should confer. Movants are encouraged to indicate in the title of the motion whether the motion is opposed. A motion is unopposed only if there has been an actual conference with opposing counsel and there is no opposition to any of the relief requested in the motion.

RULE CV-10. FORM OF PLEADINGS

(a) A pleading, motion, or other submission shall be typed or printed in 12-point or larger font (including footnotes), double-spaced, on paper sized 8½” x 11” with one-inch margins on all sides and shall be endorsed with the style of the case and the descriptive name of the document. Headings, footnotes, and quotations more than two lines long may be single-spaced.

(b) A pleading, motion, or other submission filed by a represented party shall contain the mailing address, e-mail address, signature, state bar card number, and telephone and fax numbers, including area code, of the attorney.

(c) A pleading, motion, or other submission filed by an unrepresented party shall contain the party’s mailing address, e-mail address, signature, and telephone and fax numbers, including area code.

(d) An unrepresented party and any attorney representing a party must promptly file a notice of any change in the party’s or attorney’s name, mailing address, e-mail address, or telephone or fax number. The court may sanction a party for the party’s or the attorney’s failure to do so, including dismissal of the party’s claims or defenses.

RULE CV-15. AMENDMENT OF PLEADINGS

(a) Notwithstanding the time limits provided in Rule CV-7, a party may respond to a first motion under Federal Rule of Civil Procedure 12(b) by filing an amended pleading as a matter of course not later than 21 days after the filing of the motion. *See* Fed. R. Civ. P. 15.

(b) A party that is entitled to amend its pleadings as a matter of course pursuant to Federal Rule of Civil Procedure 15 may do so without the necessity of filing a motion for leave to amend.

[NEW RULE]

RULE CV-16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

(a) A scheduling order must be entered in every case except those exempted in subdivision (b) of this rule. The form of the scheduling order should conform to the form prescribed by the judge and posted on the court website. If the judge has not posted a form scheduling order on the website, the scheduling order may conform to the form set out in Appendix B of these rules.

(b) The same types of cases that are exempt from mandatory disclosure requirements under Federal Rule of Civil Procedure 26 are exempt from the scheduling order requirement of Rule 16. In addition, the following categories of cases are also exempt from the scheduling order requirement: (1) bankruptcy appeals; (2) civil forfeiture cases; (3) land condemnation cases; (4) naturalization proceedings filed as civil cases; (5) interpleader cases; and (6) any other case where the judge finds that the ends of justice would not be served by using the scheduling order procedure of Rule 16.

(c) Not later than 60 days after any appearance of any defendant, the parties shall submit a proposed scheduling order to the court in the form described in subdivision (a). The parties first shall confer as required by Rule 26(f). The content of the proposed scheduling order shall include proposals for all deadlines set out in the described form. The parties shall endeavor to agree concerning the contents of the proposed order, but in the event they are unable to do so, each party's position and the reasons for the disagreement shall be included in the proposed schedule submitted to the court. In the event the plaintiff has not yet obtained service on all defendants, the plaintiff shall include an explanation of why all parties have not been served. The scheduling proposals of the parties shall be considered by the court, but the setting of all dates is within the discretion of the court.

(d) Filing a report that substantially conforms to Appendix N satisfies the provisions of Rule 26(f).

(e) Unopposed discovery may continue after the deadline for discovery contained in the scheduling order, provided that discovery does not delay other pretrial preparations or the trial setting. Absent exceptional circumstances, no motions relating to discovery, including motions under Rules 26(c), 29, and 37, shall be filed after the expiration of the discovery deadline, unless they are filed within 14 days after the discovery deadline and pertain to conduct occurring during the final 7 days of discovery. Written discovery is not timely unless the response to that discovery would be due before the discovery deadline. The responding party has no obligation to respond and object to written discovery if the response and objection would not be due until after the discovery deadline. Notices served before the discovery deadline that purport to schedule depositions after the discovery deadline will not be enforced.

(f) Unless otherwise ordered by the court, each party shall serve and file the following information at least 14 days before the scheduled date for trial, jury selection, docket call, or the final pretrial conference, whichever is first:

- (1) A list of questions the party desires the court to ask prospective jurors.
- (2) In cases to be tried to a jury, a statement of the party's claims or defenses to be used by the court in conducting voir dire. The statement shall be no longer than ½ page with type double-spaced.

- (3) A list of stipulated facts.
- (4) An appropriate identification of each exhibit as specified in this rule (except those to be used for impeachment only), separately identifying those that the party expects to offer and those that the party may offer if the need arises.
- (5) The name and, if not previously provided, the address and telephone number of each witness (except those to be used for impeachment only), separately identifying those whom the party expects to present and those whom the party may call if the need arises.
- (6) The name of those witnesses whose testimony is expected to be presented by means of a deposition and designation by reference to page and line of the testimony to be offered (except those to be used for impeachment only) and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony.
- (7) Proposed jury instructions and verdict forms.
- (8) In nonjury trials, Proposed Findings of Fact and Conclusions of Law.
- (9) Any motions in limine.
- (10) An estimate of the probable length of trial.

(g) At least 7 days prior to the scheduled date for trial, jury selection, docket call, or the final pretrial conference, whichever is first, each party shall serve and file the following:

- (1) A list disclosing any objections to the use under Rule 32 of deposition testimony designated by the other party.
- (2) A list disclosing any objection, together with the grounds therefore, that may be made to the admissibility of any exhibits. Objections not so disclosed, other than objections under Federal Rules of Evidence 402 and 403 shall be deemed waived unless excused by the court for good cause shown.
- (3) Responses to any motion in limine.

(h) All trial exhibits must be marked with an identifying sequence, followed by a dash, followed by a number; for example, Exhibit P-1 and Exhibit D-1. The identifying sequence (e.g., “P” and “D”) will identify the party who will offer the exhibit. Parties will assign numbers to their exhibits consecutively, beginning with the number 1. The letter “G” will be assigned to the government for identification purposes. In cases involving more complex pleading relationships (e.g., consolidated cases, intervenors, and third party actions), it is the responsibility of counsel for the plaintiff, in consultation with the judge’s courtroom deputy clerk, to coordinate the assignment of the unique identification sequences.

RULE CV-23. CLASS ACTIONS

A motion to certify a Federal Rule of Civil Procedure 23 class must include the information enumerated in Appendix A to these rules.

RULE CV-26. GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Relief. If relief is sought under Federal Rules of Civil Procedure 26(c) or 37, concerning any interrogatories, requests for production or inspection, requests for admissions, answers to interrogatories, or responses to requests for admissions, copies of the portions of the interrogatories, requests, answers, or responses in dispute shall be attached to the motion.

(b) Definitions and Rules of Construction. The full text of the definitions and rules of construction set forth in this paragraph is deemed incorporated by reference into all discovery requests, but shall not preclude (i) the definition of other terms specific to the particular litigation, (ii) the use of abbreviations, or (iii) a more narrow definition of a term defined in this paragraph. This rule is not intended to broaden or narrow the scope of discovery permitted by the Federal Rules of Civil Procedure. The following definitions apply to all discovery requests:

(1) **Communication.** The term “communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

(2) **Document.** The term “document” means any document or electronically stored information as described in Federal Rule of Civil Procedure 34(a). A draft of a nonidentical copy is a separate document within the meaning of this term.

(3) **Identify (With Respect to Persons).** When referring to a person, to “identify” means to give, to the extent known, the person’s full name, present or last known address, e-mail address, and telephone number, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

(4) **Identify (With Respect to Documents).** When referring to documents, “to identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter; (iii) date of the document; and (iv) author(s), addressee(s), and recipient(s).

(5) **Parties.** The terms “plaintiff” and “defendant” as well as a party’s full or abbreviated name or pronoun referring to a party mean the party and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries, or affiliates. This definition is not intended to impose a discovery obligation on any person who is not a party to the litigation.

(6) **Person.** The term “person” means any natural person or business, legal, or governmental entity or association.

(7) **Concerning.** The term “concerning” means relating to, referring to, describing, evidencing, or constituting.

(c) Protective Orders. Upon motion by any party demonstrating good cause, the court may enter a protective order in the form set out in Appendix H-1, or, in more complex cases, in Appendix H-2, or any other appropriate form. In cases where the parties agree to a protective order, the forms set out in Appendix H-1 and Appendix H-2 are approved.

(d) Authentication of Documents.

(1) Generally. Unless the party timely objects, a party's production of a document in response to written discovery authenticates the document for use against the party in any pretrial proceeding or at trial.

(2) Time for Objection. Once the producing party has actual notice that the document will be used, the party must object to the document's authenticity within the time period ordered by the court or specified by Rule CV-16. If neither the court nor Rule CV-16 specifies a time period, the party must object within 14 days.

(3) Manner of Objection. A party may object to the authenticity of the document, or any part of it, and must state the specific basis for the objection. An objection must be made either on the record or in writing and must have a good faith factual and legal basis. An objection made to the authenticity of only part of a document does not affect the authenticity of the remainder.

(4) Response. If the producing party objects to a document's authenticity, the party attempting to use the document should be given a reasonable opportunity to establish its authenticity.

RULE CV-30. DEPOSITIONS UPON ORAL EXAMINATION

(a) Notice. The notice for a deposition shall be in the form prescribed in Federal Rule of Civil Procedure 30, and in addition shall state the identity of persons who will attend other than the witness, parties, spouses of parties, counsel, employees of counsel, and the officer taking the deposition. If any party intends to have any other persons attend, that party must give reasonable notice to all parties of the identity of such other persons.

(b) Procedures, Examinations and Objections. The parties are permitted to stipulate on the record of a deposition any agreement regarding the rules for the deposition. Absent an agreement by the parties, objections to questions during a deposition are limited to “Objection, leading” and “Objection, form.” Objections to testimony during a deposition are limited to “Objection, nonresponsive.” Any objections to the form of the question or responsiveness of the answer are waived if not properly stated during a deposition. All other objections need not be made or recorded during a deposition to be later raised with the court. An attorney shall not, in the presence of a deponent, make objections or statements that might suggest an answer to the deponent. An attorney for a deponent shall not initiate a private conference with the deponent regarding a pending question, except for the purpose of determining whether a claim of privilege should be asserted. An attorney who instructs a deponent not to answer a question shall state, on the record, the legal basis for the instruction consistent with Federal Rule of Civil Procedure 30. If a claim of privilege has been asserted as a basis for an instruction not to answer, the attorney seeking discovery shall have reasonable latitude during the deposition to question the deponent and establish relevant information concerning the appropriateness of the assertion of privilege, including (i) the applicability of the privilege being asserted, (ii) the circumstances that may result in the privilege having been waived, and (iii) circumstances that may overcome a claim of qualified privilege. A violation of the provisions of this Rule may be deemed to be a violation of a court order and may subject the violator to sanctions under Federal Rule of Civil Procedure 37.

(c) Recorded Depositions. If a deposition is to be recorded, the party requesting the recording shall be responsible for ensuring that the equipment used is adequate to produce a clear record. If the deposition is to be video recorded, the procedures set out in Appendix I shall govern the deposition proceedings, except upon stipulation of the parties or order of the court upon motion and showing of good cause.

RULE CV-33. INTERROGATORIES TO PARTIES

(a) All answers to interrogatories must be signed under oath by the party to whom they are directed. If circumstances prevent a party from signing the answers, the party's attorney may serve the answers without the party's signature with a statement that properly executed answers will be served on the requesting party not later than 21 days after serving the unexecuted answers. This time may be extended by order of the court.

(b) A party that serves written interrogatories under Federal Rule of Civil Procedure 33 may use any of the following approved interrogatories. The court will not consider objections to these interrogatories, except upon a showing of exceptional circumstances. Each approved interrogatory counts as one question. Other interrogatories are counted in accordance with Federal Rule of Civil Procedure 33.

- (1) Identify all persons who you believe have knowledge of relevant facts and identify the issues upon which you believe they have knowledge.
- (2) Identify all persons or legal entities who have a subrogation interest in the cause of action set forth in your complaint [or counterclaim], and state the basis and extent of said interest.
- (3) If [name of party to whom the interrogatory is directed] is a partner, a partnership, or a subsidiary or affiliate of a publicly owned corporation that has a financial interest in the outcome of this lawsuit, list the identity of the parent corporation, affiliate, partner, or partnership and the relationship between it and [the named party]. If there is a publicly owned corporation or a holding company not a party to the case that has a financial interest in the outcome, list the identity of such corporation and the nature of the financial interest.
- (4) If the defendant is improperly identified, give its proper identification and state whether you will accept service of an amended summons and complaint reflecting the information furnished by you in answer hereto.
- (5) If you contend that some other person or legal entity is, in whole or in part, liable to [the plaintiff or defendant] in this matter, identify that person or legal entity and describe in detail the basis of said liability.

RULE CV-36. REQUESTS FOR ADMISSIONS

Requests for admissions made pursuant to Federal Rule of Civil Procedure 36 are limited to 30 requests. The court may permit further requests upon a showing of good cause.

RULE CV-54. COSTS AND ATTORNEY'S FEES

(a) Bill of Costs.

(1) Unless otherwise determined by the court, costs will be assessed in the final judgment in a case. A party awarded costs shall prepare and file a proposed bill of costs on Form AO 133 not later than 14 days after the entry of judgment. The proposed bill of costs shall be served on all parties.

(2) Any party opposing a proposed bill of costs must notify the party requesting costs not later than 7 days after the filing of the proposed bill of costs. The parties must then confer in an effort to resolve the dispute.

(3) If a dispute remains:

(A) the parties may file a joint motion indicating the areas of agreement and the areas of disagreement; or

(B) the party requesting costs may file a motion indicating the areas of agreement and the areas of disagreement, to which the opposing party may file a response.

Either type of motion must be filed not later than 21 days after the filing of the proposed bill of costs. The motion must contain a certificate confirming compliance with the conference requirements of this rule.

(4) The clerk shall not tax costs until the expiration of 21 days after the filing of the proposed bill of costs. If no motion is filed in that time period, the clerk shall proceed to tax costs. In a case involving an uncontested bill of costs, if the clerk fails to tax costs within 28 days after the proposed bill of costs is filed, costs will be deemed taxed as proposed.

(5) A party dissatisfied with the clerk's action may file a motion to review the clerk's action not later than 7 days after the clerk has taxed costs.

(b) Claim for Attorney's Fees.

(1) Unless the substantive law requires a claim for attorney's fees and related nontaxable expenses to be proved at trial as an element of damages to be determined by a jury, a claim for fees shall be made by motion in accordance with paragraph (b)(2) not later than 14 days after entry of judgment pursuant to Federal Rule of Civil Procedure 54. A motion for award of attorney's fees filed beyond the 14-day period may be deemed untimely and a waiver of entitlement to fees.

(2) A claim for fees shall be made as follows. Counsel for the parties shall meet and confer for the purpose of resolving all disputed issues relating to attorney's fees prior to making application. The application shall certify that such a conference has occurred. If no agreement is reached, the applicant shall certify the specific reason why the matter could not be resolved by agreement. The motion shall include a supporting document

organized chronologically by activity or project, listing attorney name, date, and hours expended on the particular activity or project, as well as an affidavit certifying (1) that the hours expended were actually expended on the topics stated, and (2) that the hours expended and rate claimed were reasonable. Such application shall also be accompanied by a brief memo setting forth the method by which the amount of fees was computed, with sufficient citation of authority to permit the reviewing court the opportunity to determine whether such computation is correct. The request shall include reference to the statutory authorization or other authority for the request.

(3) A response or reply to a motion for attorney's fees must be filed in accordance with the provisions of Rule CV-7.

CV-55

[RULE DELETED]

RULE CV-65. INJUNCTIONS

An application for a temporary restraining order or preliminary injunction shall be made in an instrument separate from the complaint.

RULE CV-65.1. SECURITY; PROCEEDINGS AGAINST SURETIES

(a) No clerk, marshal, attorney, or officer of this court will be accepted as surety, either directly or indirectly, on any bond or undertaking in any action or proceeding in this court, nor shall any such person advance or provide money or other thing of value for any cost, bail, attachment, or replevy bond taken in this court.

(b) The clerk shall make available a list of corporations or other entities authorized by the Secretary of the Treasury to act as surety on official bonds on the district's website, or in such other manner as the clerk deems sufficient public notice.

(c) Unless the court otherwise directs, every bond furnished in connection with any matter must be done in one of the following manners, either:

(1) Cash or United States Government Bonds deposited in the registry of the court in lieu of sureties; or

(2) Surety bonds that have:

(A) A corporation authorized by the Secretary of the Treasury of the United States to act as surety on official bonds that either satisfies 31 C.F.R. § 224.3 or has appointed an agent for service of process in the Western District of Texas in accordance with 31 C.F.R. § 224.4; or

(B) An individual resident of the Western District of Texas who satisfied the court that he owns real or personal property not exempt by law within the district sufficient to justify the full amount of the suretyship.

(d) Each person who is to act as a principal or as a surety on an official bond shall undertake to:

(1) Prosecute the claim or action with effect;

(2) Abide by the decision of the court; and

(3) Pay the damages sustained, to the full extent of the face amount of the bond, if the court finds that the order secured by the bond was wrongfully applied for or wrongfully made.

RULE CV-67. DEPOSIT AND DISBURSEMENT OF REGISTRY FUNDS

Deposits into and disbursements from the registry of the court must be made in compliance with Federal Rule of Civil Procedure 67 and 28 U.S.C. §§ 2041 and 2042. A motion requesting leave of court to deposit or disburse funds into or out of the registry must be filed and served on all interested parties to the proceeding. Attorneys should contact the financial deputy clerk in the division where the case is pending regarding financial language to be included in the motion and proposed order.

RULE CV-72. MAGISTRATE JUDGES, PRETRIAL MATTERS

The magistrate judges of this court are authorized to perform all the duties allowed to magistrate judges under the Federal Magistrates Act as amended in 28 U.S.C. § 636. The magistrate judges of this court are designated to exercise civil jurisdiction under section 636(c)(1) upon consent of the parties. Whenever applicable, the “Local Rules of the Assignment of Duties to United States Magistrate Judges” found at Appendix C shall apply to proceedings before the magistrate judges.

RULE CV-79. REMOVAL AND DESTRUCTION OF RECORDS AND EXHIBITS

(a) Nothing in the files of the court shall be taken from the office or custody of the clerk, except on written order of the court. The party offering any exhibit or deposition shall be responsible for its removal from the clerk's office within 60 days after the final disposition of the case, including appeal thereof. A detailed receipt shall be given by the party to the clerk. Any exhibit or deposition remaining more than 60 days after final disposition of the case, including appeal, may be destroyed or otherwise disposed of by the clerk.

(b) Prior to their destruction, documents filed under seal in civil actions must remain sealed with the clerk, unless otherwise ordered by the court.

RULE CV-88. ALTERNATIVE DISPUTE RESOLUTION

(a) Use of ADR. In all civil cases, unless specifically ordered otherwise, the parties shall agree upon a method of ADR, an ADR provider, the method of compensating the provider, and a date for completing the ADR proceeding. ADR proceedings must be completed not later than 60 days before the date of the trial setting.

(b) Attendance; Authority to Settle. Counsel, party representatives with authority to negotiate a settlement, and all other persons necessary to negotiate a settlement, including insurance carrier representatives, must attend the ADR session in person, unless the parties agree or the court orders otherwise.

(c) Fees. The provider and the litigants will determine the fees for the ADR. The court reserves the right to review the reasonableness of the fees. If the provider and litigants are unable to agree, the court will determine an appropriate fee.

(d) Disqualification. No person shall serve as a provider if any of the circumstances specified in 28 U.S.C. § 455 of the Judicial Code of Conduct exist, or if the provider believes in good faith that such circumstances exist.

(e) Relief from ADR. A party opposing ADR must file a motion requesting to be exempt from ADR.

(f) Confidentiality. Except as otherwise provided in this rule, or as agreed by the participants, a communication relating to the subject matter of any civil or criminal dispute made by any participant during an ADR procedure, whether before or after the institution of formal judicial proceedings, is confidential, may not be disclosed, may not be used as evidence against the participant in any judicial or administrative proceeding, and does not constitute a waiver of any existing privileges or immunities.

(1) Any record made at an ADR procedure is confidential, and the participants or the third party facilitating the procedure may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring the disclosure of confidential information or data relating to or arising out of the matter in dispute.

(2) An oral communication or other information used in or made a part of an ADR procedure is admissible or discoverable if it is admissible or discoverable independent of the procedure.

(3) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the court having jurisdiction of the proceedings to determine, in camera, whether the facts, circumstances, and context of the communications or other information sought to be disclosed warrant a protective order of the court or whether the communications or other information are subject to disclosure.

(g) **Final ADR Report.** At the conclusion of each ADR proceeding, the provider shall submit to the court a notice of outcome, including the style and number of the case, the type of case, the method of ADR, and whether the case has settled.

APPENDIX A.

INFORMATION REQUIRED - MOTION FOR CLASS ACTION CERTIFICATION

A motion to certify a class must include, but is not limited to, the following:

- (1)** A brief statement of the case.
- (2)** A statement defining the class plaintiff seeks to have certified including its geographical and temporal scope.
- (3)** A description of plaintiff's particular grievance and why that claim qualifies plaintiff as a member of the class as defined.
- (4)** Whether the plaintiff contends that the action may be maintained under Rule 23(b)(1), Rule 23(b)(2), or Rule 23(b)(3) and why.
- (5)** A statement respecting the four prerequisites of Federal Rule of Civil Procedure 23(a). The statement shall set forth:
 - a. The anticipated number of class members and how this number was determined.
 - b. The common questions of law and fact involved.
 - c. The reasons why plaintiff's claim is typical of those of the other class members.
 - d. The reason why representation by the named plaintiff is adequate to protect the interests of the class. This part of the statement shall specifically answer the following questions:
 - (i) Is the claim of the named plaintiff presently or potentially in conflict with that of any members of the class?
 - (ii) Will the claims of the class require subclasses presently or in the future?
 - (iii) What is the prior experience of counsel for the plaintiff that would indicate capability to handle the lawsuit?
 - (iv) Is counsel presently representing or has he at any time represented, a class in any other class action, and if so, when, and how many instances?
 - (v) How many cases is plaintiff's counsel now handling in which class action allegations are made?
- (6)** A statement describing any other pending actions in any court against the defendants alleging the same or similar causes of action.

(7) A statement that the attorney for the named plaintiff has discussed and thoroughly explained to the plaintiff the nature of a class action and potential advantages and disadvantages to the named plaintiff by proceeding in a class action rather than individually.

(8) A statement of the proposed notices to the members of the class and how and when the notices will be given, including a statement regarding security deposit for the cost of notices.

(9) A description of the extent of any settlement negotiations that have taken place and the likelihood of settlement with the named plaintiff on an individual basis. If such settlement is likely, include a statement specifying:

a. Whether or not counsel have any knowledge of any person who has relied on the fact that this suit was initially filed as a class action.

b. The manner in which counsel will protect the class in the event of settlement with the named plaintiff on an individual basis.

(10) A statement of any other matters that the plaintiff deems necessary and proper to the expedition of a decision on the motion and the speedy resolution of the case on the merits.

APPENDIX B

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
_____ DIVISION**

_____	§	
Plaintiff,	§	
	§	
	§	NO.
	§	
_____	§	
Defendant.	§	

SCHEDULING ORDER

Pursuant to Rule 16, Federal Rules of Civil Procedure, the Court issues the following Scheduling Order:

1. The parties shall complete ADR in compliance with Rule CV-88 by _____. A motion objecting to ADR must be filed not later than 60 days before that deadline.
2. The parties asserting claims for relief shall submit a written offer of settlement to opposing parties by _____, and each opposing party shall respond, in writing, by _____.
3. The parties shall file all motions to amend or supplement pleadings or to join additional parties by _____.
4. All parties asserting claims for relief shall file their designation of testifying experts and shall serve on all parties, but not file, the materials required by Federal Rule of Civil Procedure 26(a)(2)(B) by _____. Parties resisting claims for relief shall file their designation of testifying experts and shall serve on all parties, but not file, the materials required by Federal Rule of Civil Procedure 26(a)(2)(B) by _____. All designations of rebuttal experts shall be filed within 14 days of receipt of the report of the opposing expert.
5. An objection to the reliability of an expert's proposed testimony under Federal Rule of Evidence 702 shall be made by motion, specifically stating the basis for the objection and identifying the objectionable testimony, not later than ___ days of receipt of the written report of the expert's proposed testimony, or not later than ___ days of the expert's deposition, if a deposition is taken, whichever is later.
6. The parties shall complete all discovery on or before _____. Counsel may by agreement continue discovery beyond the deadline, but there will be no intervention by the Court except in extraordinary circumstances, and no trial setting will be vacated because of information obtained in post-deadline discovery.

7. All dispositive motions shall be filed not later than _____.

8. This case is set for trial [docket call, or jury selection] on _____ at __.m. The parties should consult Rule CV-16 regarding matters to be filed in advance of trial.

SIGNED this _____ day of _____.

UNITED STATES DISTRICT JUDGE

APPENDIX C

LOCAL RULES FOR THE ASSIGNMENT OF DUTIES TO UNITED STATES MAGISTRATE JUDGES

RULE 1. AUTHORITY OF UNITED STATES MAGISTRATE JUDGES

(a) Duties Under 28 U.S.C. § 636(a).

Each United States Magistrate Judge of this Court is authorized to perform the duties prescribed by 28 U.S.C. § 636(a), and may:

- (1) Exercise all the powers and duties conferred or imposed upon United States Commissioners by law and the Federal Rules of Criminal Procedure.
- (2) Administer oaths and affirmations, impose conditions of release under 18 U.S.C. § 3146, and take acknowledgments, affidavits and depositions; and
- (3) Conduct extradition proceedings, in accordance with 18 U.S.C. § 3184.

(b) Disposition of Misdemeanor Cases —18 U.S.C. § 3401.

A magistrate judge may:

- (1) Try persons accused of, and sentence persons convicted of, misdemeanors committed within this district in accordance with 18 U.S.C. § 3401;
- (2) Direct the probation service of the court to conduct a presentence investigation in any misdemeanor case; and
- (3) Conduct a jury trial in any misdemeanor case where the defendant so requests and is entitled to trial by jury under the Constitution and laws of the United States.

(c) Determination of Non-Dispositive Pretrial Matters~28 U.S.C. § 636(b)(1)(A).

A magistrate judge may hear and determine any procedural or discovery motion or other pretrial matter in a civil or criminal case, other than the motions which are specified in subsection 1(d), *infra*, of these rules.

(d) Recommendations Regarding Case-Dispositive Motions—28 U.S.C. § 636(b)(1)(B).

- (1) A magistrate judge may submit to a judge of the court a report containing proposed findings of fact and recommendations for disposition by the judge of the following pretrial motions in civil and criminal cases:

- A. Motions for injunctive relief, including temporary restraining orders and preliminary and permanent injunctions;
- B. Motions for judgment on the pleadings;
- C. Motions for summary judgment;
- D. Motions to dismiss or permit the maintenance of a class action;
- E. Motions to dismiss for failure to state a claim upon which relief may be granted;
- F. Motions to involuntarily dismiss an action;
- G. Motions for review of default judgments;
- H. Motions to dismiss or quash an indictment or information made by a defendant; and
- I. Motions to suppress evidence in a criminal case.

(2) A magistrate judge may determine any preliminary matters and conduct any necessary evidentiary hearing or other proceeding arising in the exercise of the authority conferred by this subsection.

(e) Prisoner Habeas Cases. A magistrate judge may perform any or all of the duties imposed upon a judge by the rules governing proceedings in the United States District Courts under § 2241, § 2254, and § 2255 of Title 28, United States Code. In so doing, a magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for disposition of the petition by the judge. Any order disposing of the petition may be made only by a judge.

(f) Prisoner Non-Habeas Cases. A magistrate judge may issue any preliminary orders and conduct any necessary evidentiary hearing or other appropriate proceeding and shall submit to a judge a report containing proposed findings of fact and recommendations for the disposition of non-habeas complaints filed by prisoners.

(g) Special Master References.

A magistrate judge may be designated by a judge to serve as a special master in appropriate civil cases in accordance with 28 U.S.C. § 636(b)(2) and Rule 53 of the Federal Rules of Civil Procedure. Upon the consent of the parties, a magistrate judge may be designated by a judge to serve as a special master in any civil case, notwithstanding the limitations of Rule 53(b) of the Federal Rules of Civil Procedure.

(h) Review of Administrative Agency Proceedings.

In a suit for judicial review of a final decision of an administrative agency, a magistrate judge may be designated by a judge to review the record of administrative proceedings and submit to the district judge a report and recommendation concerning (a) any defects in the agency proceedings which constitute a violation of statute or regulation or a violation of due process, (b) whether the matter should be remanded to the agency for additional factual determinations, and (c) whether the record contains substantial evidence in support of the agency decision.

- (i) Conduct of Trials and Disposition of Civil Cases Upon Consent of the Parties – 28 U.S.C. § 636(c).

Upon the consent of the parties, a full-time magistrate judge may conduct any or all proceedings in any civil case which is filed in this court, including the conduct of a jury or non-jury trial, and may order the entry of a final judgment, in accordance with 28 U.S.C. § 636(c). In the course of conducting such proceedings upon consent of the parties, a magistrate judge may hear and determine any and all pretrial and post-trial motions which are filed by the parties, including case-dispositive motions.

- (j) Other Duties.

A magistrate judge is also authorized to:

- (1) Exercise general supervision of civil and criminal calendars, conduct calendar and status calls, and determine motions to expedite or postpone the trial of cases for the judges;
- (2) Conduct pretrial conferences, settlement conferences, omnibus hearings, and related pretrial proceedings in civil and criminal cases;
- (3) Conduct arraignments in criminal cases not triable by the magistrate judge and take not guilty pleas in such cases;
- (4) Receive grand jury returns in accordance with Rule 6(f) of the Federal Rules of Criminal Procedure;
- (5) Accept waivers of indictment, pursuant to Rule 7(b) of the Federal Rules of Criminal Procedure;
- (6) Accept petit jury verdicts in the absence of a judge;
- (7) Conduct necessary proceedings leading to the potential revocation of misdemeanor probation and revocation of felony or misdemeanor supervised release;
- (8) Issue subpoenas, writs of habeas corpus ad testificandum or habeas corpus ad prosequendum, or other orders necessary to obtain the presence of parties, witnesses or evidence needed for court proceedings;
- (9) Order the exoneration or forfeiture of bonds;

- (10) Perform the functions specified in 18 U.S.C. §§ 4107, 4108, and 4109, regarding proceedings for verification of consent by offenders to transfer to or from the United States and the appointment of counsel therein;
- (11) Preside over a naturalization ceremony and administer the oath required by 8 U.S.C. § 1448(a);
- (12) Supervise proceedings on requests for letters rogatory in civil and criminal cases if designated by a district judge under 28 U.S.C. § 1782(a);
- (13) Consider and rule upon applications for administrative inspection warrants and orders permitting entry upon a taxpayer's premises to effect levies in satisfaction of unpaid tax deficits;
- (14) Issue orders authorizing the installation and use of pen registers, traps and traces, and issue orders directing a communications common carrier, including a telephone company, to provide assistance to a named federal investigative agency in accomplishing the installation of traps, traces and pen registers;
- (15) Conduct jury selection; and
- (16) Perform any additional duty as is not inconsistent with the Constitution and laws of the United States.

RULE 2. ASSIGNMENT OF MATTERS TO MAGISTRATE JUDGES

(a) General.

The method of assignment of duties to a magistrate judge and for the allocation of duties among the several magistrate judges of the court shall be made in accordance with orders of the court or by special designation of a judge.

(b) Misdemeanor Cases.

All misdemeanor cases shall be assigned, upon the filing of an information, complaint, or violation notice, or the return of an indictment, to a magistrate judge, who shall proceed in accordance with the provisions of 18 U.S.C. § 3401 and Rule 58, Federal Rules of Criminal Procedure.

RULE 3. PROCEDURE BEFORE THE MAGISTRATE JUDGE

(a) In General.

In performing duties for the court, a magistrate judge shall conform to all applicable provisions of federal statutes and rules, to the local rules of this court, and to the requirements specified in any order of reference from a judge.

(b) Special Provisions for the Disposition of Civil Cases by a Magistrate Judge on Consent of the Parties – 28 U.S.C. § 636(c).

(1) Notice.

The clerk of court shall notify the parties in all civil cases that they may consent to have a magistrate judge conduct any or all proceedings in the case and order the entry of a final judgment. Such notice shall be handed or mailed to the plaintiff or his/her representative at the time an action is filed and to other parties as attachments to copies of the complaint and summons, when served. Additional notices may be furnished to the parties at later stages of the proceedings, and may be included with pretrial notices and instructions.

(2) Execution of Consent.

The parties may sign separate consent forms; however, consent forms signed by all the parties or their representatives will also be accepted. The consent forms should be sent to the clerk of court. Unless all parties have consented to the reference, the decision of each party as indicated on the consent forms shall not be made known to any judge or magistrate judge. No magistrate judge, judge, or other court official may attempt to persuade or induce any party to consent to the reference of any matter to a magistrate judge. This rule, however, shall not preclude a judge or magistrate judge from informing the parties that they have the option of referring a case to a magistrate judge.

(3) Reference.

After the consent form has been executed and filed, the clerk shall transmit it to the judge to whom the case has been assigned for approval and referral of the case to a magistrate judge. Once the case has been assigned to a magistrate judge, the magistrate judge shall have the authority to conduct any and all proceedings to which the parties have consented and to direct the clerk of court to enter a final judgment in the same manner as if a judge had presided.

RULE 4. REVIEW AND APPEAL

(a) Appeal of Non-Dispositive Matters – 28 U.S.C. § 636(b) (1)(A).

Any party may appeal from a magistrate judge's order determining a motion or matter under subsection 1 (c) of these rules, supra, within 14 days after issuance of the magistrate judge's order, unless a different time is prescribed by the magistrate judge or a judge. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, a written statement of appeal which shall specifically designate the order, or part thereof, appealed from and the basis for any objection thereto. A judge of the court shall consider the appeal and shall set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law. The judge may also reconsider sua sponte any matter determined by a magistrate judge under this rule.

(b) Review of Case-Dispositive Motions and Prisoner Litigation – 28 U.S.C. § 636(b)(1)(B).

Any party may object to a magistrate judge's proposed findings, recommendations or report under subsections 1 (d), (e), (f) and (h) of these rules, supra, within 14 days after being served with a copy thereof. The clerk of court shall notify the parties of this right when serving copies of the report. Such party shall file with the clerk of court, and serve on the magistrate judge and all

parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need not conduct a new hearing only in his/her discretion or where required by law, and may consider the record developed before the magistrate judge, making his/her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

(c) Special Master Reports – 28 U.S.C. § 636(b)(2).

Any party may seek review of, or action on, a special master report filed by a magistrate judge in accordance with the provisions of Rule 53(e) of the Federal Rules of Civil Procedure.

(d) Appeal from Judgments in Misdemeanor Cases – 18 U.S.C. § 3402.

A defendant may appeal a judgment of conviction by a magistrate judge in a misdemeanor case by filing a notice of appeal to the District Court within 14 days after entry of the judgment, and by serving a copy of the notice upon the United States Attorney. The scope of appeal shall be the same as on an appeal from a judgment of the district court of the court of appeals.

(e) Appeal from Judgments in Civil Cases Disposed of on Consent of the Parties – 28 U.S.C. § 636(c).

(1) Appeal to the Court of Appeals.

Upon the entry of judgment in any civil case disposed of by a magistrate judge on consent of the parties under authority of 28 U.S.C. § 636(c) and subsection l(i) of these rules, supra, an aggrieved party shall appeal directly to the United States Court of Appeals for this circuit in the same manner as an appeal from any other judgment of this court.

(f) Appeals from Other Orders of a Magistrate Judge.

Appeals from any other decisions and orders of a magistrate judge not provided for in this rule should be taken as provided by a governing statute, rule, or decisional law.

APPENDIX H-1

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

_____ ,	§	
Plaintiff,	§	
	§	
	§	CIVIL ACTION NO.
	§	
_____ ,	§	
Defendant.	§	

CONFIDENTIALITY AND PROTECTIVE ORDER

Before the court is the joint motion of the parties for the entry of a confidentiality and protective order (“Protective Order”). Based on the parties’ submissions and the record in this matter, the court finds that disclosure and discovery activity in this action are likely to involve production of confidential, sensitive, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, a protective order for such information is justified in this matter:

- to expedite the flow of information;
- to facilitate the prompt resolution of disputes over confidentiality of discovery materials;
- to adequately protect information the parties are entitled to keep confidential;
- to ensure that the parties are permitted reasonably necessary uses of such material in preparation for and in the conduct of trial;
- to address the handling of confidential materials at the end of the litigation; and
- to serve the ends of justice.

This Protective Order does not confer blanket protections on all disclosures of responses to discovery, and the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to be treated as confidential.

After careful consideration, it is ORDERED that the motion is granted, and the court ORDERS the following:

1. Confidential Information

“Confidential information” means any information of any type, kind, or character that is designated as “Confidential” by any of the supplying or receiving persons, whether it be a document, information contained in a document, information revealed during discovery, or otherwise.

2. Qualified Persons

“Qualified Persons” means:

- a. the party, if a natural person;
- b. if the party is an entity, such officers or employees of the party who are actively involved in the prosecution or defense of this case who, by their receipt of Confidential information, are bound by the terms of this Protective Order;
- c. retained counsel for the parties in this litigation and their respective staff;
- d. this court and its staff and any other tribunal, special master, or dispute resolution officer duly appointed or assigned in connection with this litigation;
- e. actual or potential independent experts or consultants (and their administrative or clerical staff) engaged in connection with this litigation (which shall not include the current employees, officers, members, or agents of parties or affiliates of parties) who, by their receipt of Confidential information are bound by the terms of this Protective Order;
- f. jury and trial consultants and their staff and mock jurors who, by their receipt of Confidential information are bound by the terms of this Protective Order;
- g. litigation vendors, court reporters, video camera operators, translators, and other litigation support personnel;
- h. any person who was an author, addressee, or intended or authorized recipient of the Confidential information and who agrees to keep the information confidential, provided that such persons may see and use the Confidential information but not retain a copy; and
- i. such other person or persons as this court may designate after notice and an opportunity to be heard.

3. Designation Criteria

a. A party shall designate as “Confidential” only such information that the party in good faith believes in fact is confidential. Information that is generally available to the public, such as public filings, catalogues, advertising materials, and the like, shall not be designated as Confidential.

Information and documents that may be designated as Confidential information include, but are not limited to, trade secrets, confidential or proprietary financial information, operational data, business plans, and competitive analyses, personnel files, personal information that is protected by

law, and other sensitive information that, if not restricted as set forth in this order, may subject the producing or disclosing person to competitive or financial injury or potential legal liability to third parties.

Correspondence and other communications between the parties or with nonparties may be designated as Confidential information if the communication was made with the understanding or reasonable expectation that the information would not become generally available to the public.

- b. Confidential information shall not include information that either:
 - i. is in the public domain at the time of disclosure, as evidenced by a written document;
 - ii. becomes part of the public domain through no fault of the recipient, as evidenced by a written document;
 - iii. the receiving party can show by written document was in its rightful and lawful possession at the time of disclosure; or
 - iv. lawfully comes into the recipient's possession subsequent to the time of disclosure from another source without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.

4. Use of Confidential Information

All Confidential information provided by any party or nonparty in the course of this litigation shall be used solely for the purpose of preparation, trial, and appeal of this litigation and for no other purpose, and shall not be disclosed except in accordance with the terms of this Order.

5. Marking of Documents

Documents provided in this litigation may be designated by the producing person or by any party as Confidential information by marking each page of the documents so designated with a stamp indicating that the information is "Confidential." The designation should be made in a fashion or form that is conspicuous yet allows the Confidential information to remain legible. In lieu of marking the original of a document, if the original is not provided, the designating party may mark the copies that are provided. Originals shall be preserved for inspection.

6. Disclosure at Depositions

Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents, consultants, representatives, or independent experts retained by counsel for the purpose of this litigation, or (b) the deposition of a nonparty may be designated by any party as Confidential information by indicating on the record at the deposition that the testimony is "Confidential."

Any party also may designate information disclosed at a deposition as Confidential information by notifying all parties in writing not later than 30 days of receipt of the transcript of the specific pages and lines of the transcript that should be treated as Confidential information. All

deposition transcripts shall be treated as Confidential information for a period of 30 days after initial receipt of the transcript.

To the extent possible, the court reporter shall segregate into separate transcripts information designated as Confidential information with blank, consecutively numbered pages being provided in a nondesignated main transcript. The separate transcript containing Confidential information shall have page numbers that correspond to the blank pages in the main transcript.

Counsel for a party or a nonparty witness shall have the right to exclude from depositions any person who is not authorized to receive Confidential information pursuant to this Protective Order, but such right of exclusion shall be applicable only during periods of examination or testimony during which Confidential information is being used or discussed.

7. Disclosure to Qualified Persons

Confidential information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons except as necessary to comply with applicable law or the valid order of a court of competent jurisdiction. But if a disclosure is compelled by law or court order, the receiving party will notify the producing party as promptly as practicable (if at all possible, before making such disclosure). The receiving party shall seek a protective order or confidential treatment of such information or cooperate with the producing party to protect the information.

8. Unintentional Disclosures

Documents unintentionally produced without designation as Confidential information later may be designated and shall be treated as Confidential information from the date written notice of the designation is provided to the receiving party.

If a receiving party learns of any unauthorized disclosure of Confidential information, the party shall immediately upon learning of such disclosure inform the producing party of all pertinent facts relating to such disclosure and shall make all reasonable efforts to prevent disclosure by each unauthorized person who received such information.

9. Documents Produced for Inspection Prior to Designation

In the event documents are produced for inspection prior to designation, the documents shall be treated as Confidential information during inspection. At the time of copying for the receiving parties, Confidential information shall be marked prominently "Confidential" by the producing party.

10. Consent to Disclosure and Use in Examination

Nothing in this order shall prevent disclosure beyond the terms of this order if each party designating the information as Confidential information consents to such disclosure or if the court, after notice to all affected parties and nonparties, orders such disclosure. Nor shall anything in this order prevent any counsel of record from utilizing Confidential information in the examination or cross-examination of any person who is indicated on the document as being an author, source, or recipient of the Confidential information, irrespective of which party produced such information.

11. Challenging the Designation of Confidential Information

A party shall not be obligated to challenge the propriety of a designation Confidential information at the time such designation is made, and a failure to do so shall not preclude a subsequent challenge to the designation. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation of any information as Confidential information, the parties shall first try to resolve the dispute in good faith on an informal basis, such as by production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this Protective Order by objecting in writing to the party who designated the document or information as Confidential information. The designating party shall then have 14 days to move the court for an order preserving the designated status of the disputed information. The disputed information shall remain Confidential information unless the court orders otherwise. Failure to move for an order shall constitute a termination of the status of such item as Confidential information.

12. Challenging Release of Confidential Information to Qualified Persons

In the event that any party in good faith believes that a particular Qualified Person or the disclosure of particular Confidential information to such person should be precluded, the objecting party shall give written notice to the opposing party and the parties shall first try to resolve the dispute in good faith on an informal basis. If the dispute cannot be resolved, the objecting party shall have 21 days from the date of the written notice to move the court for an order denying the disputed person (a) status as a Qualified Person, or (b) access to particular Confidential information. The objecting party shall demonstrate that disclosure to the disputed person would expose the objecting party to a substantial risk of harm. Upon the timely filing of such a motion, no disclosure of Confidential information shall be made to the disputed person unless the court enters an order preserving the designation.

13. Manner of Use in Proceedings

In the event a party wishes to use any Confidential information in affidavits, declarations, briefs, memoranda of law, or other papers filed in this litigation, the party shall do one of the following: (1) with the consent of the producing party, file only a redacted copy of the information; (2) where appropriate (e.g., in connection with discovery and evidentiary motions) provide the information solely for *in camera* review; or (3) file such information under seal with the court consistent with the sealing requirements of the court.

Nothing in this Order shall limit the parties' rights or ability to offer evidence at a hearing or trial. The manner of using any Confidential information at a hearing or trial and the status of Confidential information resulting from any such use will be determined by the court.

14. Filing Under Seal

The clerk of this court is directed to maintain under seal all documents, transcripts of deposition testimony, answers to interrogatories, admissions, and other papers filed under seal in this litigation that have been designated, in whole or in part, as Confidential information by any party to this litigation consistent with the sealing requirements of the court.

15. Return of Documents

Not later than 120 days after conclusion of this litigation and any appeal related to it, any Confidential information, all reproductions of such information, and any notes, summaries, or

descriptions of such information in the possession of any of the persons specified in paragraph 2 shall be returned to the producing party or destroyed, except as this court may otherwise order or to the extent such information has been used as evidence at any trial or hearing. Notwithstanding this obligation to return or destroy information, counsel may retain attorney work product, including document indices, so long as that work product does not duplicate verbatim substantial portions of the text of any Confidential information.

16. Ongoing Obligations

Insofar as the provisions of this Protective Order, or any other protective orders entered in this litigation, restrict the communication and use of the information protected by it, such provisions shall continue to be binding after the conclusion of this litigation, except that (a) there shall be no restriction on documents that are used as exhibits in open court unless such exhibits were filed under seal, and (b) a party may seek the written permission of the producing party or order of the court with respect to dissolution or modification of this, or any other, protective order.

17. Duty to Ensure Compliance

Any party providing Confidential information to a Qualified Person shall have the duty to reasonably ensure that such person observes the terms of this Protective Order and shall be responsible upon breach of such duty for the failure of such person to observe the terms of this Protective Order.

18. Waiver

Pursuant to Federal Rule of Evidence 502, neither the attorney-client privilege nor work-product protection is waived by disclosure connected with this litigation.

19. Modification and Exceptions

The parties may, by stipulation, provide for exceptions to this order and any party may seek an order of this court modifying this Protective Order.

It is SO ORDERED this _____ day of _____, 20__.

United States District Judge

APPENDIX H-2

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

_____ ,	§	
Plaintiff,	§	
	§	
	§	CIVIL ACTION NO.
	§	
_____ ,	§	
Defendant.	§	

CONFIDENTIALITY AND PROTECTIVE ORDER

Before the court is the joint motion of the parties for the entry of a confidentiality and protective order (“Protective Order”). Based on the parties’ submissions and the record in this matter, the court finds that disclosure and discovery activity in this action are likely to involve production of confidential, sensitive, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, a protective order for such information is justified in this matter:

- to expedite the flow of information;
- to facilitate the prompt resolution of disputes over confidentiality of discovery materials;
- to adequately protect information the parties are entitled to keep confidential;
- to ensure that the parties are permitted reasonably necessary uses of such material in preparation for and in the conduct of trial;
- to address the handling of confidential materials at the end of the litigation; and
- to serve the ends of justice.

This Protective Order does not confer blanket protections on all disclosures of responses to discovery, and the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to be treated as confidential.

After careful consideration, it is ORDERED that the motion is granted, and the court ORDERS the following:

1. Classified Information

“Classified Information” means any information of any type, kind, or character that is designated as “Confidential,” “For Counsel Only,” or “Attorneys’ Eyes Only” by any of the supplying or receiving persons, whether it be a document, information contained in a document, information revealed during discovery, or otherwise.

2. Qualified Persons

“Qualified Persons” means:

- a. For Counsel or Attorneys’ Eyes Only information:
 - i. retained counsel for the parties in this litigation and their respective staff;
 - ii. actual or potential independent experts or consultants (and their administrative or clerical staff) engaged in connection with this litigation (which shall not include the current employees, officers, members, or agents of parties or affiliates of parties) who, prior to any disclosure of Classified Information to such person, have signed a document agreeing to be bound by the terms of this Protective Order and have been designated in writing by notice to all counsel;¹
 - iii. this court and its staff and any other tribunal, special master, or dispute resolution officer duly appointed or assigned in connection with this litigation; and
 - iv. litigation vendors, court reporters, video camera operators, translators, and other litigation support personnel.
- b. For Confidential information:
 - i. the persons identified in subparagraph 2(a);
 - ii. the party, if a natural person;
 - iii. if the party is an entity, such officers or employees of the party who are actively involved in the prosecution or defense of this case who, prior to any disclosure of Confidential information to such person, have signed a document agreeing to be bound by the terms of this Protective Order;
 - iv. actual or potential independent experts or consultants (and their administrative or clerical staff) engaged in connection with this litigation (which shall not include the current employees, officers, members, or agents of parties or affiliates of parties) who, by their receipt of Confidential information are bound by the terms of this Protective Order
 - v. jury and trial consultants and their staff and mock jurors who have signed a document agreeing to be bound by the terms of this Protective Order;

¹ Designation of an expert or consultant under this provision is not a waiver of such person’s status as a consulting only expert or of any otherwise existing protection against discovery of such person’s work or opinions.

- vi. any person who was an author, addressee, or intended or authorized recipient of the Confidential information and who agrees to keep the information confidential, provided that such persons may see and use the Confidential information but not retain a copy.
- c. Such other person as this court may designate after notice and an opportunity to be heard.

For purposes of subsections (a)(ii), the attorney who retains or designates such persons shall maintain the signed certifications of those persons.

3. Designation Criteria

a. *Classified Information.* A party shall designate as Classified Information only such information that the party in good faith believes in fact is confidential. Information that is generally available to the public, such as public filings, catalogues, advertising materials, and the like, shall not be designated as Classified Information.

Information and documents that may be designated as Classified Information include, but are not limited to, trade secrets, confidential or proprietary financial information, operational data, business plans, and competitive analyses, personnel files, personal information that is protected by law, and other sensitive information that, if not restricted as set forth in this order, may subject the producing or disclosing person to competitive or financial injury or potential legal liability to third parties.

Correspondence and other communications between the parties or with nonparties may be designated as Classified Information if the communication was made with the understanding or reasonable expectation that the information would not become generally available to the public.

b. *For Counsel or Attorneys Only.* The designation “For Counsel Only” or “Attorneys’ Eyes Only” shall be reserved for information that is believed to be unknown to the opposing party or parties, or any of the employees of a corporate party. For purposes of this order, so-designated information includes, but is not limited to, product formula information, design information, non-public financial information, pricing information, customer identification data, and certain study methodologies.

c. *Ultrasensitive Information.* At this point, the parties do not anticipate the need for higher levels of confidentiality as to ultrasensitive documents or information. However, in the event that a court orders that ultrasensitive documents or information be produced, the parties will negotiate and ask the court to enter an ultrasensitive information protocol in advance of production to further protect such information.

d. *Nonclassified Information.* Classified Information shall not include information that either:

- i. is in the public domain at the time of disclosure, as evidenced by a written document;

- ii. becomes part of the public domain through no fault of the recipient, as evidenced by a written document;
- iii. the receiving party can show by written document was in its rightful and lawful possession at the time of disclosure; or
- iv. lawfully comes into the recipient's possession subsequent to the time of disclosure from another source without restriction as to disclosure, provided such third party has the right to make the disclosure to the receiving party.

4. Use of Classified Information

All Classified Information provided by any party or nonparty in the course of this litigation shall be used solely for the purpose of preparation, trial, and appeal of this litigation and for no other purpose and shall not be disclosed except in accordance with the terms of this Order.

5. Marking of Documents

Documents provided in this litigation may be designated by the producing person or by any party as Classified Information by marking each page of the documents so designated with a stamp indicating that the information is "Confidential," "For Counsel Only," or "Attorneys' Eyes Only." The designation should be made in a fashion or form that is conspicuous yet allows the Classified Information to remain legible. In lieu of marking the original of a document, if the original is not provided, the designating party may mark the copies that are provided. Originals shall be preserved for inspection.

6. Disclosure at Depositions

Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents, consultants, representatives, or independent experts retained by counsel for the purpose of this litigation, or (b) the deposition of a nonparty may be designated by any party as Classified Information by indicating on the record at the deposition that the testimony is "Confidential" or "For Counsel Only" and is subject to the provisions of this Order.

Any party also may designate information disclosed at a deposition as Classified Information by notifying all parties in writing not later than 30 days of receipt of the transcript of the specific pages and lines of the transcript that should be treated as Classified Information thereafter. Each party shall attach a copy of each such written notice to the face of the transcript and each copy of the transcript in that party's possession, custody, or control. All deposition transcripts shall be treated as For Counsel Only for a period of 30 days after initial receipt of the transcript.

To the extent possible, the court reporter shall segregate into separate transcripts information designated as Classified Information with blank, consecutively numbered pages being provided in a non-designated main transcript. The separate transcript containing Classified Information shall have page numbers that correspond to the blank pages in the main transcript.

Counsel for a party or a nonparty witness shall have the right to exclude from depositions any person who is not authorized to receive Classified Information pursuant to this Protective Order,

but such right of exclusion shall be applicable only during periods of examination or testimony during which Classified Information is being used or discussed.

7. Disclosure to Qualified Persons

a. *To Whom.* Classified Information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons except as necessary to comply with applicable law or the valid order of a court of competent jurisdiction. But if a disclosure is compelled by law or court order, the receiving party will notify the producing party as promptly as practicable (if at all possible, before making such disclosure). The receiving party shall seek a protective order or confidential treatment of such information or cooperate with the producing party to protect the information. Information designated as For Counsel Only shall be restricted in circulation to Qualified Persons described in subparagraph 2(a).

b. *Retention of Copies During This Litigation.* Copies of For Counsel Only information shall be maintained only in the offices of outside counsel for the receiving party and, to the extent supplied to experts described in subparagraph 2(a)(ii), in the offices of those experts. Any documents produced in this litigation, regardless of classification, that are provided to Qualified Persons shall be maintained only at the office of such Qualified Person and only necessary working copies of any such documents shall be made. Copies of documents and exhibits containing Classified Information may be prepared by independent copy services, printers, or illustrators for the purpose of this litigation.

c. Each party's outside counsel shall maintain a log of all copies of For Counsel Only documents that are delivered to Qualified Persons.

8. Unintentional Disclosures

Documents unintentionally produced without designation as Classified Information later may be designated and shall be treated as Classified Information from the date written notice of the designation is provided to the receiving party.

If a receiving party learns of any unauthorized disclosure of Confidential information or For Counsel Only information, the party shall immediately upon learning of such disclosure inform the producing party of all pertinent facts relating to such disclosure and shall make all reasonable efforts to prevent disclosure by each unauthorized person who received such information.

9. Documents Produced for Inspection Prior to Designation

In the event documents are produced for inspection prior to designation, the documents shall be treated as For Counsel Only during inspection. At the time of copying for the receiving parties, Classified Information shall be marked prominently "Confidential," "For Counsel Only," or "Attorneys' Eyes Only" by the producing party.

10. Consent to Disclosure and Use in Examination

Nothing in this order shall prevent disclosure beyond the terms of this order if each party designating the information as Classified Information consents to such disclosure or if the court, after notice to all affected parties and nonparties, orders such disclosure. Nor shall anything in this

order prevent any counsel of record from utilizing Classified Information in the examination or cross-examination of any person who is indicated on the document as being an author, source, or recipient of the Classified Information, irrespective of which party produced such information.

11. Challenging the Designation

a. *Classified Information.* A party shall not be obligated to challenge the propriety of a designation of Classified Information at the time such designation is made, and a failure to do so shall not preclude a subsequent challenge to the designation. In the event that any party to this litigation disagrees at any stage of these proceedings with the designation of any information as Classified Information, the parties shall first try to resolve the dispute in good faith on an informal basis, such as by production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this Protective Order by objecting in writing to the party who designated the document or information as Classified Information. The designating party shall then have 14 days to move the court for an order preserving the designated status of the disputed information. The disputed information shall remain Classified Information unless the court orders otherwise. Failure to move for an order shall constitute a termination of the status of such item as Classified Information.

b. *Qualified Persons.* In the event that any party in good faith disagrees with the designation of a person as a Qualified Person or the disclosure of particular Classified Information to such person, the parties shall first try to resolve the dispute in good faith on an informal basis. If the dispute cannot be resolved, the objecting party shall have 21 days from the date of the designation or, in the event particular Classified Information is requested subsequent to the designation of the Qualified Person, 21 days from service of the request to move the court for an order denying the disputed person (a) status as a Qualified Person, or (b) access to particular Classified Information. The objecting party shall demonstrate that disclosure to the disputed person would expose the objecting party to a substantial risk of harm. Upon the timely filing of such a motion, no disclosure of Classified Information shall be made to the disputed person unless the court enters an order preserving the designation.

12. Manner of Use in Proceedings

In the event a party wishes to use any Classified Information in affidavits, declarations, briefs, memoranda of law, or other papers filed in this litigation, the party shall do one of the following: (1) with the consent of the producing party, file only a redacted copy of the information; (2) where appropriate (e.g., in connection with discovery and evidentiary motions) provide the information solely for *in camera* review; or (3) file such information under seal with the court consistent with the sealing requirements of the court.

Nothing in this Order shall limit the parties' rights or ability to offer evidence at a hearing or trial. The manner of using any Classified Information at a hearing or trial and the status of Classified Information resulting from any such use will be determined by the court.

13. Filing Under Seal

The clerk of this court is directed to maintain under seal all documents, transcripts of deposition testimony, answers to interrogatories, admissions, and other papers filed under seal in

this litigation that have been designated, in whole or in part, as Classified Information by any party to this litigation consistent with the sealing requirements of the court.

14. Return of Documents

Not later than 120 days after conclusion of this litigation and any appeal related to it, any Classified Information, all reproductions of such information, and any notes, summaries, or descriptions of such information in the possession of any of the persons specified in paragraph 2 (except subparagraph 2(a)(iii)) shall be returned to the producing party or destroyed, except as this court may otherwise order or to the extent such information has been used as evidence at any trial or hearing. Notwithstanding this obligation to return or destroy information, counsel may retain attorney work product, including document indices, so long as that work product does not duplicate verbatim substantial portions of the text of any Classified Information.

15. Ongoing Obligations

Insofar as the provisions of this Protective Order, or any other protective orders entered in this litigation, restrict the communication and use of the information protected by it, such provisions shall continue to be binding after the conclusion of this litigation, except that (a) there shall be no restriction on documents that are used as exhibits in open court unless such exhibits were filed under seal, and (b) a party may seek the written permission of the producing party or order of the court with respect to dissolution or modification of this, or any other, protective order.

16. Advice to Clients

This order shall not bar any attorney in the course of rendering advice to such attorney's client with respect to this litigation from conveying to any party client the attorney's evaluation in a general way of Classified Information produced or exchanged under the terms of this order; provided, however, that in rendering such advice and otherwise communicating with the client, the attorney shall not disclose the specific contents of any Classified Information produced by another party if such disclosure would be contrary to the terms of this Protective Order.

17. Duty to Ensure Compliance

Any party designating any person as a Qualified Person shall have the duty to reasonably ensure that such person observes the terms of this Protective Order and shall be responsible upon breach of such duty for the failure of such person to observe the terms of this Protective Order.

18. Waiver

Pursuant to Federal Rule of Evidence 502, neither the attorney-client privilege nor work-product protection is waived by disclosure connected with this litigation.

19. Modification and Exceptions

The parties may, by stipulation, provide for exceptions to this order and any party may seek an order of this court modifying this Protective Order.

It is SO ORDERED this _____ day of _____, 20__.

United States District Judge

APPENDIX I
GUIDELINES FOR RECORDED DEPOSITION

Recorded depositions are authorized without the necessity of a motion and court order if taken under the following guidelines:

1. The beginning of the recording shall contain an announcement or other indication of the style of the case, the cause number, the name of the court where the case is pending, the physical location of the deposition, and an introduction of the witness, the attorneys, any parties or party representative who may be present, the court reporter, the video technician, and any other persons present at the deposition.
2. The witness will be sworn on camera.
3. The camera shall remain on the witness in standard fashion throughout the deposition. Close-ups and other similar techniques are forbidden unless agreed to by the parties or ordered by the court.
4. The arrangement of the interrogation should be such that, in responding to the interrogating attorney, the witness will look as directly into the camera as possible.
5. No smoking shall be allowed during the recording, and there should be no unnecessary noise or movement.
6. The party issuing the notice of the recorded deposition shall be responsible for the original of the recording, and other parties shall have the option to obtain copies at their cost.
7. A time-date generator or other suitable indexing method must be used throughout the course of recording the deposition.
8. An announcement of the time on the recording shall be made each time the recording is begun and is stopped.
9. The time of conclusion of the recording must be announced on the recording.

APPENDIX N

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

_____	§	
	§	
PLAINTIFF(S)	§	
	§	
V.	§	CIVIL ACTION NO. _____
	§	
_____	§	
	§	
DEFENDANT(S)	§	

JOINT FEDERAL RULE OF CIVIL PROCEDURE 26 REPORT

1. What are the causes of action, defenses, and counterclaims in this case? What are the elements of the cause(s) of action, defenses, and counterclaims pled?
2. Are there any outstanding jurisdictional issues? For removed cases based on diversity jurisdiction:
 - a. Do the parties agree that the amount in controversy exceeded \$75,000 at the time of removal? If not, each party should state its position on the amount in controversy.
 - b. If any party is a partnership or limited liability company, have the parties confirmed the citizenship of all partners/members in determining whether diversity exists?
3. Are there any unserved parties? If more than 90 days have passed since the filing of the Complaint or petition, should these unserved parties be dismissed?
4. Are there any agreements or stipulations that can be made about any facts in this case or any element in the cause(s) of action?
5. Are there any legal issues in this case that can be narrowed by agreement or by motion?
6. Are there any issues about preservation of discoverable information?

7. Are there any issues about disclosure or discovery of electronically stored information? In what forms should electronically-stored information be produced and will production include metadata?
8. What are the subjects on which discovery may be needed?
9. Have initial disclosures been made? If not, should any changes be made in the timing, form, or requirement for initial disclosures?
10. What, if any, discovery has been completed? What discovery remains to be done and when should it be completed? Have the parties considered conducting discovery in phases or agreeing to limit discovery?
11. What, if any, discovery disputes exist?
12. Have the parties discussed the desirability of filing a proposed order pursuant to Federal Rule of Evidence 502?
13. Have the parties discussed early mediation?
14. Have the parties considered seeking entry of a confidentiality and protective order and are there any other scheduling or discovery items requiring the court's attention?

Counsel for Plaintiff(s)

Date

Counsel for Defendant(s)

Date

United States District Court
Western District of Texas

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

Adopted January 20, 2006

Revised December 11, 2008

(Effective January 15, 2009)

Revised November 4, 2009

Revised April 1, 2010

Revised June 2, 2011

Revised November 17, 2013

Revised December 1, 2016

Revised June 24, 2021

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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