To: **Attorneys, Texas Eastern**

From: **David Maland, U.S. District Clerk**   *David Maland*

Re: **Electronically Filing Sealed Documents**

Date: **June 9, 2009**

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I. **LOCAL RULES RE: SEALED DOCUMENTS**.

The local rule regarding the filing of sealed documents in civil cases is Local Rule CV-5(a)(7), which reads as follows:

(7)   **Sealed Documents.**

        (A)   Unless authorized by statute or rule, a document in a civil case shall not be filed under seal unless it contains a statement by counsel following the certificate of service that certifies that (1) a motion to seal the document has been filed, or (2) the court already has granted authorization to seal the document.

        (B)   A motion to file document(s) under seal must be filed separately from thedocument(s) sought to be sealed. A motion to seal that is filed as a sealed document does not need to include the certification specified in section (A) above. For additional rules regarding the filing of sealed documents in criminal cases, see Local Rule CR-49(b).

        (C)   Documents requested or authorized to be filed under seal or ex parte shall be filed in electronic form. All sealed or ex parte documents filed with the court must comply with the file size and other form requirements of Local Rules CV-5(a) and CV-7. Counsel is responsible for serving documents under seal to opposing counsel, and may do so in electronic form, and for complying with Local Rule CV-5(a)(9) regarding courtesy copies of filings. When a sealed order is entered by the court, the clerk will send a sealed copy of the order only to the lead attorney for each party (see Local Rule CV-11), who is responsible for distributing the order to all other counsel of record for that party.

The pertinent rule for filing criminal case sealed documents is Local Rule CR-49(b), which reads as follows:

LOCAL RULE CR-49   **Service and Filing of ~~Papers~~ <u>Documents</u>**

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(b)   **Filing of Sealed Documents in Criminal Cases.** Documents in criminal cases that are filed under seal pursuant to general order[1] or rule of this court shall be filed under seal without need for a motion to seal or a certification by counsel. Other types of documents in criminal cases may not be filed under seal unless counsel certifies that (1) a motion for leave to seal the document in question has been filed or (2) the court has already granted authorization to seal. For filing sealed documents in civil cases, see Local Rule CV-5(c).

     (1)   Counsel filing a document under seal must send a paper copy of that document to the presiding judge's chambers. The paper copy should be sent directly to the judge's chambers and not to the clerk's office. Judges may opt out of this rule by entering an order.

II. INSTRUCTIONS FOR FILING AND SERVING SEALED DOCUMENTS.

  Please follow these steps when electronically filing sealed documents in Texas Eastern:

1. A previously signed protective order constitutes authorization to file document(s) under seal, since those documents were designated as confidential by the protective order. See Local Rule CV-5(a)(7)(A).

2. If you do not yet have leave of court to seal a document, you must first electronically file a motion requesting leave to seal. Local Rule CV-5(a)(7)(A). Do not attach the document(s) you are seeking to seal to the motion, as the motion will not be sealed. The motion for leave to seal should be electronically filed on or before the filing deadline for the document you are seeking to seal. After the judge grants your motion, include the Local Rule CV-5(c) certification in your document and proceed to electronic filing per step 4 below.

3. If a non-sealed filing contains an exhibit that must be sealed, the entire documentary submission must be filed under seal, including the exhibits. Sealed exhibits should be filed as an attachment to the main document and are subject to the filing procedures specified in steps 4, 5 and 6.

4. Look for "sealed events" on the attorney menu. The docket entry text you create should be as descriptive as possible without containing confidential information. You should be able to identify the sealed document from your docket entry text. File your document(s) using "sealed events."

5. Documents larger than 5 megabytes ("MB") will need to be divided into multiple files per Local Rule CV-5(a)(4). Check file sizes before you begin filing. You can attach several documents to a single docket entry. The size of the PDF documents attached to the docket entry can be greater than 5 MB, but each individual document must be less than 5 MB. The CM/ECF system will "time out" if uploading the documents for a docket entry takes longer than one hour. If you cannot upload

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[1]Existing general orders that fall into this category are General Order 93-3, "General Order on Sealed Indictments," and General Order 93-4, "General Order on Sealed Criminal Matters."

your main document and attachments within an hour, then file what you can before the entry "times out," then use the "sealed attachments" or "sealed patent attachments" event on the CM/ECF attorney menu to file the remaining attachments.

6. Once filing is complete, CM/ECF will send a Notice of Electronic Filing ("NEF") to the presiding judge and counsel of record. The docket entry text will be visible on the electronic docket sheet, but the documents themselves will be sealed, i.e., not visible. If the presiding judge has not opted out of the courtesy copy requirement (Local Rule CV-5(a)(9), you should send a paper copy of the sealed document(s) you filed to the judge.

7. Since the image of the filed electronic document is sealed to everyone except the presiding judge, you, as the filing attorney, are required to effect service of the sealed document(s) on other counsel of record. Receipt of the NEF by opposing counsel does not constitute service of the document, since it does not convey the image of the actual sealed document(s). See Local Rule CV-5(a)(7)(C).

8. Do not use "sealed events" for any other purpose than e-filing sealed documents. If you are filing a sealed patent document and no sealed patent event is available, use the most relevant sealed civil event.