

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

**SUBSTANTIVE AMENDMENTS TO LOCAL RULES
EFFECTIVE DECEMBER 1, 2019**

CIVIL RULES

1.1 General Rules

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(b) Effective Date. Effective January 1, 1996, as amended December 1, 2018~~19~~.

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7.4 Habeas Corpus Petitions Under 28 U.S.C. § 2254

The following procedures shall govern actions based upon 28 U.S.C. § 2254.

(a) Respondent's Answer.

(1) Unless otherwise ordered by the court, answers to petitions filed under 28 U.S.C. § 2254 shall be due 90 days from the date of the court's order requiring an answer be filed.

(2) In addition to the information and transcripts required by Rule 5 of the Rules Governing Section 2254 Cases in the United States District Courts ("§ 2254 Rules"), the answer must include:

(A) A chronological list or state court docket sheet(s) (also known as state court case summaries) identifying all state proceedings (including all pretrial, trial, sentencing, or post-conviction proceedings) that are either related to the conviction and sentence at issue, or related to any claim in the petition, and

(B) A notice stating whether, in addition to transcripts attached to the answer, there are any other transcripts that have not been filed, or state proceedings that have not been transcribed, which are either related to the conviction and sentence at issue, or related to any claim in the petition.

(3) In addition to the briefs and opinions to be filed with the answer under § 2254 Rule 5, the respondent must also file with the answer a copy of:

(A) Any notice of appeal, including any appendix to that notice of appeal, that the petitioner submitted in an appellate court contesting the relevant conviction or sentence, or contesting an adverse judgment or order in a post-conviction proceeding relating to that conviction or sentence; and

(B) Opinions and dispositive orders of any trial court or other tribunal, relating to the claims in the petition, along with any part of the record (including briefs, motions, or parts of transcripts) adopted or otherwise incorporated by reference in such opinions or orders.

(4) A complete copy of the answer, including all documents attached to, filed with, or referenced in the answer, shall be served on petitioner. A certificate of service conforming to LR 5.1(d) shall be included with the filing, listing the documents served upon the petitioner.

(b) Reply. The petitioner may file a reply within thirty (30) days after the respondent files an answer.

(c) Respondent's Hearing Request or Dispositive Motion. Within sixty (60) days of serving its answer to the petition for habeas corpus, the respondent shall file either:

(1) A written statement representing that an evidentiary hearing is necessary to resolve disputed issues of material fact; or

(2) If the respondent believes that there are no disputed issues of material fact, a dispositive motion (e.g., a motion for summary judgment), with specific references, where applicable, to the pertinent transcripts and state court orders. See also LR 56.1 governing memoranda filed in support of motions for summary judgment.

7.5 Habeas Corpus Petitions Under 28 U.S.C. § 2255; Petitioner's Right to Reply

The petitioner may file a reply within thirty (30) days after the respondent files an answer.

9.1 Social Security Cases

The following procedures shall govern all actions challenging a final decision of the Commissioner of the Social Security Administration filed pursuant to § 205(g) of the Social Security Act, 42 U.S.C. § 405(g).

(a)(1) The Commissioner of the Social Security Administration, and the United States Attorney for the District of New Hampshire (hereafter collectively referred to as “the government”), agree to accept the summons and complaint in this action by electronic means through the court’s Electronic Case Files System (ECF) and the government agrees not to contest the adequacy of service when the summons and complaint are transmitted by this means.

(a)(2) To allow the Social Security Administration to promptly identify and collect the administrative record relating to the claim, when the complaint is filed, the plaintiff shall separately provide the United States Attorney’s Office with the claimant’s full social security number. This information should not be filed with the court.

(ab) The ~~defendant~~ government shall serve and file ~~its answer, together with~~ a certified copy of the administrative record, within sixty (60) days after service on the Commissioner, which shall be deemed an answer and general denial for the purposes of the Federal Rules of Civil Procedure. No separate answer need be filed. If a closed case is reopened, the ~~defendant~~ government shall serve and file a certified copy of the administrative record within sixty (60) days after the order reopening the case is issued.

(bc) Within thirty (30) days after the administrative record is filed, the plaintiff shall serve and file a Motion for Order Reversing Decision of the Commissioner. The motion shall be accompanied by a (1) statement of material facts not to exceed 15 pages; and (2) memorandum of law not to exceed 25 pages. Each fact identified in the statement of facts and memorandum shall be supported by citation to the page(s) in the administrative record where evidence supporting that fact is located.

(ed) Within thirty (30) days after the plaintiff’s Motion for Order Reversing Decision is filed, the ~~defendant~~ government shall serve and file a Motion for Order Affirming Decision of the Commissioner or for Other Relief. The motion shall be accompanied by a memorandum of law not to exceed 25 pages, which shall respond to the specific issues raised in the plaintiff’s motion. The ~~defendant’s~~ government’s motion may be accompanied by a statement of facts **only** to the extent the ~~defendant~~ government determines material facts were omitted from the plaintiff’s statement and it shall not exceed 15 pages. Each fact identified in the statement of facts and memorandum shall be supported by citation to the page(s) in the administrative record where evidence supporting that fact is located.

(de) Within seven (7) days of the service of the ~~defendant’s~~ government’s Motion for Order Affirming Decision of Commissioner, the plaintiff may file a response not to exceed ten (10) pages. Further filings are not encouraged and should be submitted only in exceptional circumstances.

(ef) “Material facts” shall be limited to only those facts that are material to one or more issues presented in the motions. All references to material facts shall be supported by specific and accurate citations to the page(s) in the administrative record where such facts are located.

(fg) Motions to strike all or any portion of a statement of material facts are not permitted.

67.2 Deposit of Registry Funds Into Interest-Bearing Account

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(b) Investment of Registry Funds.

(1) Court Registry Investment System.

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(D) Under CRIS, monies deposited in each case will be “pooled” together with those on deposit with the Treasury to the credit of other courts in CRIS and used to purchase Government Account Series securities through the Bureau of ~~Public Debt~~ the Fiscal Service, which will be held at the Treasury in an account in the name and to the credit of the Director of Administrative Office of the United States Courts, hereby designated custodian for CRIS. The pooled funds will be invested in accordance with the principles of the CRIS Investment Policy as approved by the Registry Monitoring Group.

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83.1 Bar of District Court

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(b) Procedure for Admission. Each applicant for admission to the bar of this court shall ~~file with the clerk’s office a completed Petition and Oath on Admission on a form provided by the clerk’s office,~~ complete the attorney admission application electronically, using the PACER system at www.pacer.gov. ~~along with~~ the required fee as is published on the court’s website. Submission of a completed ~~Petition and Oath on Admission~~ application to the bar of this court constitutes the applicant’s consent to have the clerk’s office obtain the applicant’s public and non-public disciplinary history from the New Hampshire Attorney Discipline Office. During the process of reviewing an application for admission, the court, or clerk’s office personnel, may formally or informally request the applicant provide additional information.

Upon the court’s approval of the application, the applicant shall be admitted to the bar of this court upon taking the prescribed oath or affirmation. Applicants must be sworn in as members of the district’s bar within one year of the date their application is approved or their application will be deemed inactive and a new application will be required.

Upon payment of the admission fee as published on the court’s website, which includes a fee for deposit to the United States District Court Library Fund, the applicant shall then be a member of the bar of this court.

(c) Applicant Character and Fitness. Should the court have a question regarding an applicant's character or fitness to practice in this district, the applicant shall have the burden of proving good moral character and fitness to the court by clear and convincing evidence. In resolving the issue, the court may consider the Character and Fitness Standards set forth in New Hampshire Supreme Court Rule 42B. The chief judge, or a designated judicial officer, shall decide any question regarding an applicant's character and fitness to practice in this district. The court may also appoint a member of its bar to investigate or prosecute an applicant's character and fitness to practice.

If the court is considering the possibility of finding that an applicant lacks the character or fitness to practice in this district, the applicant shall (1) be given written notice of the reasons for that potential finding, (2) be given an opportunity and deadline to respond in writing, and (3) be notified of the right to request a hearing. The applicant may also request the complete record of the application from the court. If the applicant does not timely respond to the written notice, the application will be deemed withdrawn. If the applicant provides a response and/or requests a hearing, a hearing shall be scheduled and the matter shall be resolved by written decision. The applicant may voluntarily withdraw an application for admission at any time prior to the issuance of a final written decision.

(ed) Special Admissions. Upon motion and by order of the court, in special circumstances, a person may be admitted to the bar of this court at any time, whether or not the person has complied with all of the admissions requirements provided under the rules. However, the requirements that the person to be admitted take an oath or affirmation and pay the prescribed fee shall be satisfied and shall not be waived.

(de) Reinstatement After Taking Inactive Status or Resigning. Any attorney who takes inactive status or resigns must reapply for admission as set forth in subsections (a) and (b) before resuming practice in this court.

(ef) Continued Membership. Active membership in good standing in any of the following is a precondition to continued membership in the bar of this court: The bar of the highest court of a state, the District of Columbia, the Commonwealth of Puerto Rico, the Territory of Guam, the Commonwealth of the Northern Mariana Islands, or the Virgin Islands of the United States.

83.2 Practice by Persons Not Member of the Bar of This Court

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(b) Pro Hac Vice Admissions.

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(1) Supporting Affidavit. An affidavit from the attorney seeking admission pro hac vice shall be attached to the motion for admission. The affidavit must include:

- (A) the attorney's office address and telephone number;
- (B) a listing of court(s) to which the attorney has been admitted to practice and the year(s) of admission;
- (C) a statement that the attorney is in good standing and eligible to practice in the court(s);
- (D) a statement that the attorney is not currently suspended or disbarred in any jurisdiction;
- (E) a statement describing the nature and status of any (1) denials of admission to practice before any court, (12) previously imposed or pending disciplinary matters involving the attorney, and (23) prior felony or misdemeanor criminal convictions; and
- (F) a statement disclosing and explaining any prior denials or revocations of pro hac vice status in any court.

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83.8 Photographing; Broadcasting; Televising

(a) Prohibition. Except authorized personnel in the discharge of their official governmental duties, all persons are prohibited from photographing, recording (audio or video), broadcasting, transmitting, or televising within the Warren B. Rudman U.S. Courthouse (including the garage, basement, and ramp area, as well as other areas designated on specific occasions by the United States Marshal when necessary for security reasons). This prohibition extends to persons participating in a court proceeding remotely by video or teleconference.

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(c) Exceptions.

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(2) Unless otherwise prohibited by a judge or the clerk, members of the bar of this court or any other bar and their agents may possess and use cell phones, smart watches, computers, pagers, ~~personal digital assistants (PDAs)~~, and similar electronic devices within the Rudman Courthouse. However, such devices shall be set on silence mode, and no telephone calls made or received, while in any courtroom or judge's chambers without specific advance authorization by the presiding judge. Additionally, the use

of cell phones for telephone calls shall be restricted to conference rooms within the Rudman Courthouse.

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83.12 Sealed Documents

(a) **Filings, Orders, and Docket Text Entries.** All filings, orders, and docket text entries shall be public unless:

~~(12) a filing, order, or docket entry has been sealed by order of this court, another court or agency;~~

~~(24) a filing, order, or docket entry must be sealed pursuant to state law, federal law, the Federal Rules of Criminal or Civil Procedure, or these rules; or~~

(3) related to a departure or sentence reduction motion based solely on substantial assistance, which will be sealed at Level I until further order of the court.

~~(3) this court issues an order sealing a filing, order, or docket entry.~~

The caption for filings sealed pursuant to subsections (2)-(3) shall (i) clearly indicate that the document is filed under seal, and (ii) include a citation to the applicable statute or rule authorizing the seal.

(b) **Levels of Sealed Filings, Orders, and Docket Text Entries.**

(1) **Level I.** Filings, orders, and docket text entries sealed at Level I may be reviewed by any attorney or pro se party appearing in the action without prior leave of court.

(2) **Level II.** Filings, orders, and docket text entries sealed at Level II may be reviewed only by the filer or, in the case of an order, the person to whom the order is directed without prior leave of court.

(c) **Motions to Seal.** Except for matters automatically sealed pursuant to subsection (a)(2)-(3), all requests to seal must be made by motion. A motion to seal must address the following:

(1) identify the filing(s), or portions thereof, to be sealed;

(2) provide the factual and legal basis to justify sealing the filing(s);

(3) propose a duration of seal;

(4) indicate whether the movant also seeks to seal the motion to seal and/or all related docket text entries; and

(5) indicate whether the filing(s) should be sealed at Level I or Level II.

(d) Filing Procedures. A motion to seal, and the related document(s) to be sealed, must be filed conventionally and submitted in compliance with Administrative Procedure for Electronic Case Filing 3.3. The motion to seal, related document(s), and data storage device shall be submitted in an envelope with a notation on the outside of the envelope such as “DOCUMENTS SUBMITTED UNDER SEAL.”

If a party is requesting to seal only a portion of a document, the party must provide both (1) a redacted copy, and (2) an unredacted copy of the document highlighting in a translucent color the portion(s) of the document sought to be sealed.

The filings will be accepted provisionally under seal, subject to the court’s subsequent ruling on the motion. If the court denies the motion to seal, any materials submitted under provisional seal will be stricken from the court’s docket and returned to the movant.

~~**(c) Motions to Seal.** A motion to seal must be filed conventionally together with the item to be sealed and both will be accepted provisionally under seal, subject to the court’s subsequent ruling on the motion. The motion must explain the basis for sealing, specify the proposed date on which the requested seal order shall expire, and designate whether the material is to be sealed at Level I or Level II. If a party is requesting that only certain portions of a document be sealed, the party must provide a full copy of the document clearly displaying the portions sought to be sealed. Departure motions based on substantial assistance need not contain a proposed seal duration and, unless extended upon motion for good cause shown, shall remain sealed for five (5) years or until the completion of any term of imprisonment, whichever occurs later. Any motion to seal, upon specific request, may also be sealed if it contains a discussion of the confidential material. If the court denies the motion to seal, any materials tendered under provisional seal will be returned to the movant.~~

~~**(d) Filing Procedures.** All material submitted by a party either under seal or requesting sealed status, provisionally or otherwise, must be submitted in compliance with this subsection and Administrative Procedure for Electronic Case Filing 3.3. The documents and data storage device shall be placed in a sealed envelope with a copy of the document’s cover page affixed to the outside of the envelope. The party shall designate the envelope with a conspicuous notation such as “DOCUMENTS UNDER SEAL,” “DOCUMENTS SUBJECT TO PROTECTIVE ORDER,” or the equivalent. If the basis for the document’s sealed status is not apparent, an explanatory cover letter should also be attached to alert the clerk’s staff of its special status.~~

~~Parties cannot seal otherwise public documents merely by agreement or by labeling them “sealed.”~~

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Civil Form 2, Discovery Plan

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DISCOVERY

DISCOVERY NEEDED:

Give a brief description of subjects on which discovery will be needed.

MANDATORY DISCLOSURES (Fed. R. Civ. P. 26(a)(1)):

Advise the court whether the parties have stipulated to a different method of disclosure from that required by Fed. R. Civ. P. 26(a)(1) or have agreed not to require any Rule 26(a)(1) disclosures, and if so, in cases where ESI discovery is anticipated, advise how the parties will exchange information regarding the custodian(s) and location(s) of ESI in the absence of mandatory disclosures.

INTERROGATORIES: A maximum of (number) [PRESUMPTIVE LIMIT 25] interrogatories by each party to any other party. Responses due 30 days after service unless otherwise agreed to pursuant to Fed. R. Civ. P. 29.

REQUESTS FOR ADMISSION:

A maximum of (number) requests for admission by each party to any other party. Responses due 30 days after service unless otherwise agreed to pursuant to Fed. R. Civ. P. 29.

DEPOSITIONS:

A maximum of (number) [PRESUMPTIVE LIMIT 10] depositions by plaintiff(s) and (number) [PRESUMPTIVE LIMIT 10] by defendant(s). Each deposition (*other than of /name*) limited to a maximum of (number) [PRESUMPTIVE LIMIT 7] hours unless extended by agreement of the parties.

ELECTRONIC INFORMATION DISCLOSURES (Fed. R. Civ. P. 26(f)):

If the parties do not anticipate discovery of electronically stored information ("ESI"), they should provide an explanation here. Otherwise, the parties must provide (a) a brief description of the parties' proposals regarding the disclosure or discovery of ESI and/or attach a proposed order and/or (b) identify any disputes regarding the same. For further guidance, parties should refer to the ESI checklist provided on the court's website.

*The potential issues the parties should consider include, **but are not limited to:***

(1) Preservation. Counsel should attempt to agree on steps the parties will take to segregate and preserve ESI in order to avoid accusations of spoliation;

(2) Location and Systems. Counsel should attempt to identify systems from which discovery will be prioritized (e.g. email, finance, HR systems, backup/archival systems), including the description, location and media of those systems;

(3) Scope of Search, Proportionality and Costs. Counsel should attempt to identify and agree on the scope of ESI discovery, the search method(s), including specific words or phrases or other methodology that will be used to identify discoverable ESI, the amount and nature of the claims being made and who will bear the cost of obtaining the data;

(4) *Format and ~~Media~~ Mode of Transmittal.* Counsel should attempt to agree on the format and ~~media~~ mode of transmittal to be used in the production of ESI, and whether production of some or all ESI in paper form is agreeable in lieu of production in electronic format;

(5) *Phasing.* Whether it is appropriate to conduct discovery of ESI in phases;

(6) *Privileged or Trial Preparation Materials.* Counsel also should attempt to reach agreement regarding what will happen in the event privileged or trial preparation materials are inadvertently disclosed. See Fed. R. Evid. 502.

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CRIMINAL RULES

1.1 General Rules

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(b) **Effective Date.** Effective January 1, 1996, as amended December 1, 2018~~19~~.

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10.2 Complex Cases

If the court determines at the arraignment that the case is likely to be unusually complex, the court shall schedule a status conference within fourteen (14) days after the arraignment. LCrR 12.1(a), 12.1(b), 16.1(b), and 16.1(c) shall not apply in such cases, and the court shall instead establish the dates for discovery production, and the filing of discovery, dispositive, and evidentiary motions, at the status conference.

32.1 Guideline Sentencing

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(e) **Objections to Presentence Investigation Report.** No later than fourteen (14) days after receiving the initial presentence report, counsel for the government and counsel for the defendant shall deliver to the probation officer, and to each other, written objections of fact or guideline application to the initial presentence report. If counsel has no objections, counsel shall so notify the probation officer in writing. Delivery of said objections shall be made by email or mail, ~~in person, or by facsimile transmission~~. A party waives any objection to the presentence report by failing to comply with this rule unless the court determines that the basis for the objection was not reasonably available prior to the deadline.

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(i) **Deviations and Sentencing Memoranda.** Any party seeking a departure or a variance under the sentencing guidelines, or seeking to submit a sentencing memorandum, must file the motion or memorandum no later than ten (10) days before the date of the scheduled sentencing hearing and shall serve a copy upon opposing counsel and the probation officer. Any objections to the proposed sentencing options and supervised conditions must be included in the sentencing memorandum. Any motion for a departure or variance shall specify the grounds for relief and the legal authority for the departure or variance. A response to a sentencing memorandum or motion for departure or variance shall be filed no later than four (4) days before the date of the scheduled sentencing hearing and shall be served upon opposing counsel and the probation officer.

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APPENDIX A
SUPPLEMENTAL RULES
FOR ELECTRONIC CASE FILING

Adopted as Administrative Procedures June 1, 2004
Incorporated as Supplement to Local Rules December 1, 2011
As Amended Through December 1, 2018¹⁹

1.1 General Rules

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(d) Definitions.

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“Filing User” means those individuals who have a ~~court~~ PACER issued login and password with permission to file documents electronically in this judicial district.

2.3 Format and Quality Control

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(h) Erroneous Submissions.

(1) **Erroneous Docket Entries.** A Filing User may not correct a docket entry or document submission error after a document is electronically filed in ECF. If necessary to satisfy a filing deadline, a Filing User may electronically resubmit the entire document, including all attachments, in ECF. Otherwise, the Filing User shall not attempt to refile the document in ECF. The Filing User shall immediately contact the clerk's office ~~help-desk~~ to report the error and request necessary remedial action. The clerk's office may make an entry indicating that the document was filed in error and may request that the document be refiled. The court may, upon motion of a party or upon its own motion, strike any erroneously or inappropriately filed document.

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6.1 Participants

(a) **Mandatory Attorney Registration.** Attorneys admitted to the bar of this court and in good standing who intend to appear in an ECF case in this judicial district shall ~~register as Filing Users of~~ request access to the court's ECF system by completing an on-line registration form on the court's website at www.nhd.uscourts.gov through the attorney's individual PACER account. Neither represented parties nor incarcerated pro se litigants may register as a Filing User.

(b) **Attorneys Admitted Pro Hac Vice.** An attorney admitted pro hac vice in an ECF case shall ~~register as a Filing User of~~ request access to the court's ECF system in accordance with these procedures through the attorney's individual PACER account.

(c) **Pro Se Registration.** A non-incarcerated pro se litigant in a pending case may apply to the court for permission to become a Filing User on a motion form prescribed by the clerk's office. If the motion is granted, the litigant must have or obtain a PACER account, through which the litigant may request access to the court's ECF system. If during the course of the action the pro se litigant retains an attorney who appears on their behalf, the clerk's office shall terminate the pro se litigant's ~~registration in that case~~ access to the court's ECF system upon the attorney's appearance.

6.2 Registration

- (a) **PACER Form.** ~~Attorneys shall register using the court's Internet site (www.nhd.uscourts.gov). Pro se litigants shall register using a paper registration form prescribed by the clerk's office and the form shall be attached to a motion for permission to become a Filing User. Filing Users manage access to the court's ECF system through their individual PACER account.~~
- (b) **Log-In/Password Usage.** No Filing User or other person may knowingly permit or cause to permit a Filing User's password to be used by anyone other than an authorized agent of the Filing User, such as a designated ECF filing assistant. The use of a Filing User's log-in and password by another attorney or other authorized agent shall be deemed to be the act of the Filing User.
- (c) **Obligation to Protect Password.** Filing Users ~~may~~ must change their passwords if they learn that the security of their PACER password has been compromised. ~~If a Filing User learns that the security of their password has been compromised, they must immediately change their password and notify the clerk's office help desk.~~
- (d) **Obligation to Update Information.** A Filing User has an obligation to ~~notify the clerk's office of~~ update the Filing User's PACER account with any change in the following information ~~associated with his or her ECF filing account:~~ name; mailing address; firm name or affiliation; primary email address or primary telephone number. If participating in an active ECF case, a Filing User shall also provide written notice of such change through the use of the "Notice of Change of Address" event in ECF in each active case. ~~Filing Users are required to maintain the primary and any secondary email addresses associated with their accounts by logging into ECF and making changes in a timely manner.~~ Filing Users are also obligated to ensure that the email addresses associated with their accounts are correct and able to successfully accept notices from the court. The court is not responsible for notices that are rejected by a Filing User's primary and/or secondary email address. ~~The court reserves the right to remove invalid email addresses from a Filing User's account without notice.~~
- ~~(e) — PACER Registration.~~ A Filing User shall register with PACER and maintain a current user ID and password.
- (f) **Withdrawal as Registered User.** Once registered, an attorney of record in an active ECF case may withdraw from participating in the ECF system only upon motion in that case. Otherwise, an attorney may withdraw from participating in ~~the~~ this court's ECF system ~~by providing the clerk's office with a written notice of withdrawal through their PACER account.~~ Upon receipt, the clerk's office will immediately cancel the attorney's password and delete the attorney's name from any applicable electronic service list. An attorney's withdrawal from participation in the ECF system will not be construed as authorization for the attorney to file cases or documents conventionally unless so authorized by court order.

**APPENDIX B
SUPPLEMENTAL RULES
FOR PATENT CASES**

**Incorporated as Supplement to Local Rules December 1, 2011
As Amended Through December 1, 2015¹⁹**

7.1 FINAL PATENT DISCLOSURES

(a) Final Infringement Contentions.

(1) Not later than twenty-one (21) days after service of the court's claim construction order, any party asserting infringement must serve on all parties its "Final Infringement Contentions," which shall include the party's final statement of all contentions required by SPR 5.1(a). A party may not assert at trial any infringement contentions not set out in its Final Infringement Contentions;

(2) To the extent the Final Infringement Contentions identify additional accused products or processes not set out in the Preliminary Infringement Contentions, such amendment must be supported by good cause (e.g., discovery of previously unavailable information) and the party asserting infringement must include a separate statement providing the specific grounds establishing such good cause. The accused infringer may move to exclude such amendment on the ground that good cause does not exist. Such motion must be filed within fourteen (14) days after service of the Final Infringement Contentions. If such motion is not filed (or if filed not granted), the amendment will be effective.

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