

WESTERN DISTRICT OF MICHIGAN
LOCAL CRIMINAL RULE 49.10
(Amended December 1, 2016)

49.10 Filing and service by electronic means

- (a) General information; definitions - Pursuant to Rule 49(d) of the Federal Rules of Criminal Procedure, the Clerk will accept pleadings and other papers filed and signed by electronic means in accordance with this rule. All papers filed by electronic means must comply with technical standards, if any, now or hereafter established by the Judicial Conference of the United States.

This rule shall apply to all criminal actions maintained in the court's electronic case filing system. All documents, whether filed electronically or on paper, will be placed into the electronic case filing system, except as provided below. Attorneys must file and serve all documents electronically by use of the ECF system unless (1) the attorney has been specifically exempted by the Court for cause or (2) a particular document is not eligible for electronic filing under this rule.

As used in this rule, the term

- “ECF system” means the electronic case filing system maintained by this Court;
- “registered attorney” means an attorney who is authorized pursuant to Rule 49.10(b) to file documents electronically and to receive service on the ECF system;
- “charging document” means the original complaint, indictment (or any superseding indictment), information or other document by which charges are brought in a criminal case;
- “electronically filed document” means any order, opinion, judgment, pleading, notice, transcript, motion, brief or other paper submitted electronically to the ECF system;
- “traditionally filed document” means a pleading or other paper submitted to the Clerk in paper form for filing;
- “NEF” means the Notice of Electronic Filing generated by the ECF system;
- “nonelectronic means of service” means one of the methods of service authorized by Rule 49(b) of the Federal Rules of Criminal Procedure and Rule 5(b) of the Federal Rules of Civil Procedure, except electronic service under FED. R. CIV. P. 5(b)(2)(E).

(b) Mandatory registration; Attorney training

- (i) Every attorney practicing in this Court must register to file and serve documents electronically by the ECF system.
- (ii) To be entitled to register as a user of the ECF system, an attorney must be admitted to practice in this District, be a member in good standing, and have filed with the Clerk a completed ECF Attorney Registration form. In addition, the attorney or the attorney's firm must have a Public Access to Court Electronic Records (PACER) account and an e-mail address.

Detailed registration information is available on the Court's Website (www.miwd.uscourts.gov). Upon receipt of the ECF Attorney Registration form, the Court will issue a login name and a user password to qualified attorneys. All registered attorneys have an affirmative duty to update their accounts with any change in their e-mail address. A registered attorney may not knowingly cause or allow another person to file a document using the attorney's login name and password, except for members of the attorney's staff. Authorized use of an attorney's login name and password by a staff member is deemed to be the act of the attorney. However, a registered attorney must not allow an unregistered attorney, even a member of the same firm, to use his or her login name and password. If a login name and/or password should become compromised, the attorney is responsible for notifying the ECF Help Desk immediately.

- (iii) The Clerk's Office will provide periodic training sessions on use of the ECF system. The Court will also provide on its Website a User's Manual containing instructions on the use of the ECF system and an on-line tutorial. Law firms are encouraged to have individuals responsible for electronic filing (attorney, paralegal or automation specialist) attend a live training session or use the on-line tutorial.

- (c) Charging documents - The filing of charging documents must be accomplished in the traditional manner (not electronically). The Court may issue a summons or warrant electronically, but such process may be served only in accordance with Rule 4(c) of the Federal Rules of Criminal Procedure.

(d) Electronic filing

- (i) Mandatory Electronic Filing - All attorneys must file all pleadings and other papers permitted by the Federal Rules and the Local Rules of this Court (except charging documents) electronically in all criminal cases, subject to the exceptions set forth below. All electronically filed documents must be in PDF digital format and must be submitted in accordance with the instructions set forth in the User's Manual. *Pro se* parties who are not members of the bar of the Court may not file pleadings or other papers electronically, but must submit them in paper form.
- (ii) Papers that may not be filed electronically - The following documents may

not be filed electronically, but must be submitted in paper form:

- (A) Documents submitted by a person who is not a registered attorney (for example, a *pro se* litigant);
 - (B) Papers filed in cases that have been sealed in their entirety;
 - (C) Documents that are required by statute to be filed *in camera*;
 - (D) Garnishee disclosures and other documents submitted by unrepresented third parties in response to writs or other court process.
- (iii) Electronic Filing of Affidavits and Other Original Documents: The following documents must be filed electronically by submission of a scanned PDF version of the original document:
- (A) Affidavits in support of or in opposition to a motion (This rule does not apply to affidavits of service);
 - (B) Declarations under penalty of perjury;
 - (C) Certified copies of judgments or orders of other Courts.

The electronically filed version of such documents must bear a scanned image of all original manuscript signatures. The filer must meet the requirements of Rule 49.10(e)(vii) regarding evidence of an original signature.

- (iv) Deadlines - Filing documents electronically does not in any way alter any filing deadlines. An electronically filed document is deemed filed upon completion of the transmission and issuance by the Court's system of an NEF. In situations where attachments to an electronically filed document are submitted in paper form, the electronic document is deemed filed upon issuance of the NEF, provided that the paper exhibits are filed and served within 72 hours thereof. All electronic transmissions of documents must be completed (i.e., received completely by the Clerk's Office) prior to midnight, Eastern Time, in order to be considered timely filed that day. Where a specific time of day deadline is set by Court order or stipulation, the electronic filing must be completed by that time.
- (v) Technical failures - The Clerk shall deem the Court's Website to be subject to a technical failure on a given day if the site is unable to accept filings continuously or intermittently over the course of any period of time greater than one hour after 12:00 noon (Eastern Time) that day, in which case, filings due that day which were not filed due solely to such technical failures shall become due the next business day. Such delayed filings must be accompanied by a declaration or affidavit attesting to the filer's

failed attempts to file electronically at least two times after 12:00 noon separated by at least one hour on each day of delay because of such technical failure. The initial point of contact for any practitioner experiencing difficulty filing a document electronically shall be the ECF Help Desk, available via phone at (616) 456-2206 or (800) 290-2742, or via e-mail at ecfhelp@miwd.uscourts.gov.

(vi) Official record; discarding of traditionally filed documents - For purposes of Rule 55 of the Federal Rules of Criminal Procedure, the official record of all proceedings filed on and after November 3, 2003, is the electronic file maintained on the Court's ECF system. The Clerk's Office will discard all traditionally filed documents after they have become part of the electronic record, unless the document produces a low-quality electronic file.

(vii) Exhibits and attachments -

(A) Oversized documents. No PDF document exceeding 10 MB in size may be filed in the CM/ECF system. Filers must divide such documents into component parts, each part not to exceed 10 MB in size, for purposes of electronic filing. The docket entry must clearly indicate that the document is filed in parts. An exhibit may be filed traditionally only if it is exempt from electronic filing under subrule (d)(ii) of this rule.

(B) Requirements. Filers must not attach as an exhibit any pleading or other paper already on file with the Court, but shall merely refer to that document. All exhibits and attachments, whether filed electronically or traditionally, must contain on their face a prominent exhibit number or letter. If one or more attachments or exhibits to an electronically filed document are being submitted traditionally under this rule, the electronically filed document must contain a notice of that fact in its text.

(e) Signature

(i) Attorneys - A registered attorney's use of the assigned login name and password to submit an electronically filed document serves as the registered attorney's signature on that document, for purposes of Fed. R. Civ. P. 11 and for all other purposes under the Federal Rules of Criminal and Civil Procedure and the Local Rules of this Court. The identity of the registered attorney submitting the electronically filed document must be reflected at the end of the document by means of an "s/[attorney's name]" block showing the attorney's name, followed by the attorney's business address, telephone number, and e-mail address. Graphic and other electronic signatures are discouraged.

(ii) Multiple attorney signatures - The filer of any electronically filed document

requiring multiple signatures (e.g., stipulations, joint motions) must list thereon all the names of other attorney signatories by means of an “s/[attorney's name]” block for each. By submitting such a document, the filer certifies that each of the other attorneys has expressly agreed to the form and substance of the document, that the filer has their actual authority to submit the document electronically, and that the requirements of Rule 49.10(e)(viii) regarding evidence of signature have been met. This paragraph does not apply to pro-se or unrepresented parties, whose manuscript signature, in original or scanned form, must appear on the face of the document.

- (iii) Court reporters - The electronic filing of a transcript by a court reporter by use of the court reporter’s login name and password shall be deemed the filing of a signed and certified original document for all purposes.
- (iv) Judges - The electronic filing of an opinion, order, warrant, judgment or other document by a judge (or authorized member of the judge’s staff) by use of the judge’s login and password shall be deemed the filing of a signed original document for all purposes.
- (v) Clerk of Court or Deputy Clerks - The electronic filing of any document by the Clerk or a Deputy Clerk of this Court or of the Circuit Court of Appeals by use of that individual’s login and password shall be deemed the filing of a signed original document for all purposes.
- (vi) Probation Office and Office of the U.S. Marshal - The Probation Office and Office of the United States Marshal for this district are authorized to file and serve documents electronically. The electronic filing of any document by the Probation Office and Office of the United States Marshal by use of the assigned login and password shall be deemed the filing of a signed original document for all purposes.
- (vii) Signature of defendant - Documents containing the original signature of the defendant must be submitted in one of three ways: (1) by use of the in-court electronic signature pad; (2) in a scanned PDF document containing the image of defendant’s manuscript signature; or, (3) if neither of the foregoing is feasible in traditional form.
- (viii) Evidence of Original Signature - Filers of documents containing signatures authorized by Rule 49(e)(ii) (multiple attorney signatures) must maintain any records evidencing concurrence, and filers of documents containing signatures authorized by Rule 49(d)(iii) (electronically filed affidavits, etc.) and 49(e)(vii) (documents containing defendant’s signature) must maintain the documents bearing the original manual signature for subsequent production to the Court or for inspection by a party until one year after the final resolution of the action (including appeal, if any). A non-filing signatory or party who disputes the

authenticity of a signature on an electronically filed document must file an objection to the document within fourteen (14) days after service of that document.

- (f) Proposed pleadings - Except for proposed sealed filings, if the filing of an electronically submitted document requires leave of Court, such as a brief in excess of page limits, the proposed document must be attached as an exhibit to the motion seeking leave to file. If the Court grants leave to file the document, the Clerk of Court will electronically file the document without further action by the attorney. Requests to file documents under seal are governed by Local Criminal Rule 49.8.
- (g) Proposed orders - Proposed orders must be submitted electronically. All proposed orders must be in PDF format and must be: (1) attached as an exhibit to a motion or stipulation; or (2) contained within the body of a stipulation; or (3) submitted separately. If the Judge approves the proposed order, it will be refiled electronically under a separate document number.
- (h) Service of electronically filed documents
 - (i) Summons and warrants - Warrants and summons may be issued in electronic form with electronically affixed signatures and seal. Service of warrants and summons, however, must be made in accordance with FED. R. CRIM. P. 4(c) and may not be made electronically.
 - (ii) Service on registered attorneys - By registering under this rule, an attorney automatically consents to electronic service by both the Court and any opposing attorney of any electronically filed document in any case in which the registered attorney appears. Consequently, service of an electronically filed document upon a registered attorney is deemed complete upon the transmission of an NEF to that attorney and no separate certificate of service should be filed. Traditionally filed documents and sealed documents must be served on registered attorneys by nonelectronic means of service, and a proof of service filed.
 - (iii) Service on United States Probation Office - A registered attorney may serve the United States Probation Office electronically with a copy of sentencing memoranda, motions for departure, or any other document that the Federal Rules of Criminal Procedure or these rules require to be served on the Probation Office. If such documents are filed by a registered attorney electronically, service will be accomplished by the ECF system automatically. If such documents are filed traditionally, they must be served on the Probation Office by nonelectronic means of service.
 - (iv) Service on unregistered attorneys and *pro se* parties - Counsel filing any pleading or other paper must serve attorneys not registered under this rule and *pro se* parties by nonelectronic means of service. A proof of

service must be filed.

- (v) Method of electronic service - At the time a document is filed either electronically or by scanning paper submissions, the Court's system will generate an NEF, which will be transmitted by e-mail to the filer and all registered attorneys who have appeared on that case. The NEF will contain a hyperlink to the filed document. The attorney filing the document should retain a paper or digital copy of the NEF, which serves as the Court's date-stamp and proof of filing. Except in the case of sealed documents (see Local Criminal Rule 49.8(c)) and *ex parte* filings (see Local Criminal Rule 49.7(b),(c)), transmission of the NEF to the registered e-mail address constitutes service of an electronically filed document upon any registered attorney. Only service of the NEF by the Court's system constitutes electronic service; transmission of a document by one party to another by regular e-mail does not constitute service.

- (vi) [Repealed]

- (i) Court orders, judgments, writs and other process - Judgments and orders may be filed electronically by the Court or authorized Court personnel. Any order or other Court-issued document filed electronically without the image of the manuscript signature of the judge or clerk has the same force and effect as a document bearing an original signature. Upon entry of an order or judgment in a criminal proceeding, the clerk will transmit an NEF to all registered attorneys. Such transmission constitutes the notice to registered attorneys required by FED. R. CRIM. P. 49(c). The clerk will provide notice to attorneys not registered under this rule and *pro se* parties by nonelectronic means of service. The Clerk may electronically affix the Seal of the Court on writs, summons, and other process, which shall have the same legal force and effect as process bearing an imprinted seal.

- (j) Access to electronically stored documents - Any person may review at the Clerk's Office filings in a criminal case that have not been sealed by the Court or filed *ex parte*. Any person may retrieve a docket sheet in a criminal case through the PACER system and may access electronically the text of documents (except sealed documents, *ex parte* documents, and transcripts) stored on the ECF system and filed on or after November 1, 2004.

- (k) Facsimile transmissions - The Clerk will not accept for filing any pleading or other paper submitted by facsimile transmission.