

AA
MK

Brian Carr
11301 NE 7th St, Apt J5
Vancouver, WA 98684

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

Brian P. Carr
Plaintiff

versus

The State of Oregon through Hardy Myers in his official
capacity as Attorney General of the State of Oregon and
the City of Portland through Linda Meng in her official
capacity as City Attorney of the City of Portland
Defendants

Civil No. 3:08-CV-398-HA

Memorandum of Law
In Support of
Motion to Reconsider
Access to the Court's
CM/ECF System

1. On March 11, 2008, the court adopted an 'Electronic Public Access Fee Schedule' in accordance with 28 U.S.C. § 1913, 1914, 1926, 1930, and 1932 which states 'Attorneys of record and parties in a case (including *pro se* litigants) receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer.' However, no provision has been made for granting *pro se* litigants their one free copy other than through access to the court's CM/ECF system.
2. This access is required by the constitutional provisions of due process which guarantees the right of the affected individual to be heard before an impartial authority, presented with the evidence against them, given the opportunity to present evidence on their own behalf, and the right to appeal.

3. It is beyond question that 'Every court has supervisory power over its own records and files' Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978). However, this power is constrained by the sound discretion of the court. As an impartial authority, the court can not arbitrarily give preferential treatment to one party or another.
4. The electronic record is different from the 'original copy' submitted to the court in that it is 'stamped' and protected from alteration. The electronic version is often more useful as the text can be searched and copied to other documents in a most accurate and straight forward manner.
5. To not provide a party access to this portion of the record would be prejudicial (not being given access to the evidence presented against the individual) just as it would be prejudicial to charge one party for access while the other is provided free access without good cause.
6. Similarly, access to documents via the court's CM/ECF is normally quicker than service through mail. It would again be prejudicial to provide certain parties access to court decisions more promptly than to other parties without good cause.
7. According to Local Rule 5 (c), filing of papers outside of the court's CM/ECF require two copies of the documents while electronic filing only requires one copy (Local Rule 100.4 (b)). Further if the a party without access to the court's CM/ECF system wishes to submit an electronic copy (to insure that the papers provide easy electronic access), then the submitting party must file the electronic version on a diskette or CD. The expense of the additional copy and the media are not incurred by parties who are permitted access to the court's CM/ECF system.
8. It is clear that the court has supervisory powers of its own records, but the court must have good cause for preferential or prejudicial treatment to any party.

Respectfully submitted, April 21, 2008 (Portland, OR).

Brian P. Carr
s/ Brian P. Carr

Signature of Plaintiff

Brian Carr

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Vancouver, WA 98684

503-545-8357